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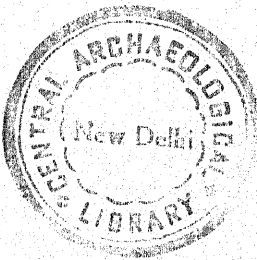
GOVERNMENT OF INDIA
REFORMS OFFICE

THE
UNREPEALED CENTRAL ACTS

WITH
CHRONOLOGICAL TABLE AND INDEX

VOLUME VI

From 1911 to 1916, both inclusive

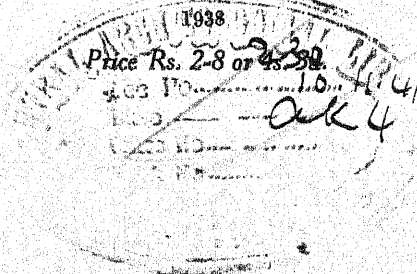


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I.G.



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International Book Service, Poona 4.
Jacques & Co., Kamptee Road, Nagpur, Messrs. Neston.
Jaina & Bros., Mori Gate, Delhi and Connaught Place, New Delhi, Messrs. J. M.
Kamala Book Depot, 15, College Square, Calcutta.
Karnataka Publishing House, Bangalore City.
Keale & Co., 65, Britto Road, Karachi (Sadar).
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Krishnaswami & Co., Teppakulam P. O., Trichinopoly Fort, Messrs. S.
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Local Self-Govt. Institute, Bombay.
London Book Co. (India), Arbab Road, Peshawar, Murree, Nowshera and Rawalpindi.
Mackwin & Co., Booksellers, Stationers and News Agents, Inverarity Road, off Elphinstone Street, Karachi (Sadar).
Malhotra & Co., Post Box No. 94, Lahore, Messrs. U. P.
Malik & Sons, Sialkot City.
Mathur, B. S., Book-seller, Civil Lines, Jodhpur.
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Newman & Co., Ltd., Calcutta, Messrs. W.
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CENTRAL ARCHAEOLOGICAL
SURVEY, NEW DELHI.

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PREFACE.

The Acts included in this Volume are printed generally as modified up to the 31st December, 1937 ; but the repeals recently effected by the Repealing Act, 1938 (I of 1938), have also been taken into account in preparing the text as well as the Chronological Table.

K. SUNDARAM, I.C.S.,

*Officer on Special Duty, Reforms Office,
Government of India.*

NEW DELHI ;

1st April, 1938.

LIST OF ABBREVIATIONS USED.

A. O.	for Government of India (Adaptation of Indian Laws) Order, 1937, as modified by the Government of India (Adaptation of Indian Laws) Supplementary Order, 1937.
B. & O.	„ Bihar and Orissa.
Ben.	„ Bengal.
Bom.	„ Bombay.
Brit. Enact., I. S.	„ British Enactments in force in Indian States.
Ch.	„ Chapter.
Cl.	„ Clause.
Coll. Stat. Ind.	„ Collection of Statutes relating to India.
C. P.	„ Central Provinces.
E. B. & A.	„ Eastern Bengal and Assam.
Gen. R. & O.	„ General Statutory Rules and Orders.
G. G. in C.	„ Governor General in Council.
G. G. of India in C.	„ Governor General of India in Council.
G. in C.	„ Governor in Council.
G. of I.	„ Government of India.
Govt.	„ Government.
Ins.	„ Inserted.
L. G.	„ Local Government.
Mad	„ Madras
N.-W. F. P.	„ North-West Frontier Province.
Pt.	„ Part.
R. and O.	„ Rules and Orders.
Reg.	„ Regulation.
Rep.	„ Repealed.
S.	„ Section.
Sch.	„ Schedule.
Subs.	„ Substituted.
U. P.	„ United Provinces.

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CORRIGENDA

- Page 15 : In line 24, *for* " amendment " *read* " amendments ".
- Page 51 : In line 8, *for* " question " *read* " questions ".
- Page 245 : In line 32, *after* " association " *insert* " shall ".
- Page 250 : In line 20, *for* " affected " *read* " effected ".
- Page 290 : In line 26, *for* " of " *read* " or ".
- Page 303 : In line 35, *for* " resolution " *read* " resolutions ".
- Page 305 : In line 28, *for* " on " *read* " an ".
- Page 334 : In line 10, *for* " remunerations " *read* " remuneration ".
- Page 345 : In line 31, *for* the last " the " *read* " this ".
- Page 349 : In line 18, *after* " Court " *insert* " or ".
- Page 352 : In line 12, *for* the second " of " *read* " or ".
- Page 386 : In line 30, *after* " standing to " *insert* " the ".

THE
UNREPEALED CENTRAL ACTS.
VOLUME VI.

THE OPIUM (AMENDMENT) ACT, 1911.

ACT NO. I OF 1911.¹

[5th January, 1911.]

An Act further to amend the Opium Act, 1857.

XIII of 1857. WHEREAS it is expedient further to amend the Opium Act, 1857; It is hereby enacted as follows :—

1. This Act may be called the Opium (Amendment) Act, 1911.

Short title.

2. [*Amendment of Act XIII of 1857, section 3.*] *Rep. by the Repealing Act, 1938 (I of 1938), s. 2 and Sch.*

3. [*Continuance of orders issued by Board of Revenue, Calcutta.*] *Rep. by the Repealing Act, 1938 (I of 1938), s. 2 and Sch.*

4. Any order or direction, regulation, sanction or other thing purporting to have been issued, made, given or done under the said Act by the Board of Revenue of the United Provinces of Agra and Oudh prior to the commencement of this Act is hereby ratified and confirmed.

Ratification
of orders
already
issued by
Board of
Revenue,
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¹ For Proceedings in Council, see Gazette of India, 1911, Part VI, p. 35.

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ACT No. II OF 1911.¹

[1st March, 1911.]

An Act to amend the law relating to the protection of Inventions and Designs.

WHEREAS it is expedient to amend the law relating to the protection of inventions and designs ; It is hereby enacted as follows :—

PRELIMINARY.

1. (1) This Act may be called the Indian Patents and Designs Act, 1911. Short title, extent and commencement.
 (2) It extends to the whole of British India, including British Baluchistan and the Santhal Parganas ; and

(3) It shall come into force on the first day of January, 1912.

2. In this Act, unless there is anything repugnant in the subject or con- Definitions. text,—

²[(1) "Advocate General" means an Advocate General appointed under the Government of India Act, 1935 :]

(2) "article" means (as respects designs) any article of manufacture and any substance, artificial or natural or partly artificial and partly natural :

(3) "Controller" means the Controller of Patents and Designs appointed under this Act :

¹ For Statement of Objects and Reasons, see Gazette of India, 1910, Pt. V, p. 92 ; for Report of Select Committee, see *ibid.*, 1911, Pt. V, p. 1 ; and for Proceedings in Council, see *ibid.*, 1910, Pt. VI, p. 337, dated 9th April, 1910, and *ibid.*, 1911, Pt. VI, pp. 31, 45, 179.

² Subs. by the A. O. for original cl. (1).

(Preliminary.)

(4) "copyright" means the exclusive right to apply a design to any article in any class in which the design is registered :

¹[(5) "design" means only the features of shape, configuration, pattern or ornament applied to any article by any industrial process or means, whether manual, mechanical or chemical, separate or combined, which in the finished article appeal to and are judged solely by the eye ; but does not include any mode or principle of construction or anything which is in substance a mere mechanical device, and does not include any trade mark as defined in Section 478, or property mark as defined in section 479 of the Indian Penal Code :] XLV of 1860.

(6) "District Court" has the meaning assigned to that expression by the Code of Civil Procedure, 1908 : V of 1908.

(7) "High Court" has the meaning assigned to that expression by the Code of Criminal Procedure, 1898, in reference to proceedings against European V of 1898. British subjects :

(8) "invention" means any manner of new manufacture and includes an improvement and an alleged invention :

(9) "legal representative" means a person who in law represents the estate of a deceased person :

(10) "manufacture" includes any art, process or manner of producing, preparing or making an article, and also any article prepared or produced by manufacture :

(11) "patent" means a patent granted under the provisions of this Act :

¹[(12) "patentee" means the person for the time being entered on the register of patents kept under this Act as the grantee or proprietor of the patent :]

(13) "prescribed" includes prescribed by rules under this Act : and

(14) "proprietor of a ²[new or original] design,"—

(a) where the author of the design, for good consideration, executes the work for some other person, means the person for whom the design is so executed ; and

(b) where any person acquires the design or the right to apply the design to any article, either exclusively of any other person or otherwise, means, in the respect and to the extent in and to which the design or right has been so acquired, the person by whom the design or right is so acquired ; and

(c) in any other case, means the author of the design ;

and where the property in, or the right to apply, the design has devolved from the original proprietor upon any other person, includes that other person.

¹ Subs. by the Indian Patents and Designs (Amendment) Act, 1930 (7 of 1930), s. 2, for the original clause.

² Subs. by s. 2, *ibid.*, for "new and original".

(Part I.—Patents.)

PART I.

PATENTS.

Application for and Grant of Patent.

3. (1) An application for a patent may be made by any person whether Application. he is a British subject or not, and whether alone or jointly with any other person.

(2) The application must be made in the prescribed form, and must be left at the Patent Office in the prescribed manner.

(3) The application must contain a declaration to the effect that the applicant is in possession of an invention, whereof he, or in the case of a joint application one at least of the applicants, claims to be the true and first inventor or the legal representative or assign of such inventor and for which he desires to obtain a patent, and must be accompanied by a specification and by the prescribed fee.

(4) Where the true and first inventor is not a party to the application, the application must contain a statement of his name, and such particulars for his identification as may be prescribed, and the applicant must show that he is the legal representative or assign of such inventor.

4. (1) The specification must particularly describe and ascertain the Specification. nature of the invention and the manner in which the same is to be performed.

(2) Where the Controller deems it desirable, he may require that suitable drawings shall be supplied with the specification, or at any time before the acceptance of the application, and such drawings shall be deemed to form part of the specification.

(3) The specification must commence with the title, and must end with a distinct statement of the invention claimed.

(4) If in any particular case the Controller considers that an application should be further supplemented by a model or sample of anything illustrating the invention or alleged to constitute an invention, such model or sample as he may require shall be furnished before the acceptance of the application, but such model or sample shall not be deemed to form part of the specification.

5. (1) The Controller shall examine every application, and if he considers that— Proceedings upon application.

- (a) the nature of the invention is not fairly described, or
- (b) the application, specification and drawings have not been prepared in the prescribed manner ¹* * *, or
- (c) the title does not sufficiently indicate the subject-matter of the invention, or
- (d) the statement of claim does not sufficiently define the invention, or

¹ The words "or relate to more than one invention" rep. by the Indian Patents and Designs (Amendment) Act, 1930 (7 of 1930), s. 3.

(Part I.—Patents.)

(e) the invention as described and claimed is *primâ facie* not a new manufacture or improvement, ¹[or

(f) the specification relates to more than one invention,]

he may refuse to accept the application or require that the application, specification or drawings be amended before he proceeds with the application; and in the latter case the application shall, if the Controller so directs, bear date as from the time when the requirement is complied with :

¹[Provided that, when a specification comprises more than one invention, the application shall, if the Controller or the applicant so requires, be restricted to one invention and the other inventions may be made the subject-matter of fresh applications ; and any such fresh application shall be proceeded with as a substantive application, but the Controller may, in his discretion, direct that any such fresh application made before the acceptance of the original application shall bear the date of the original application or such later date as he may fix, and the fresh application shall be deemed, for the purposes of this Act, to have been made on the date which it bears in accordance with such direction.]

(2) Where the Controller refuses to accept an application or requires an amendment, the applicant may appeal from his decision to the ²[Central Government].

(3) The investigations required by this section shall not be held in any way to guarantee the validity of any patent, and no liability shall be incurred by the ²[Central Government] or any officer by reason of, or in connection with, any such investigation, or any proceeding consequent thereon.

(4) Unless an application is accepted within twelve months from the date of the application, the application shall (except where an appeal has been lodged) become void :

³[Provided that where, before, or within three months after, the expiration of the said period of twelve months, a request is made to the Controller for an extension of time by any period not exceeding three months, the application shall, on payment of the prescribed fee, be continued or revived, as the case may be, during, but not beyond, the period of extension so requested.]

6. On the acceptance of an application the Controller shall give notice thereof to the applicant and shall advertise the acceptance ; and the application and specification with the drawings (if any) shall be open to public inspection.

Advertise-
ment on
acceptance
of applica-
tion.

Use of
invention on
acceptance of
application.

7. Where an application for a patent in respect of an invention has been accepted, any use or publication of the invention during the period between the date of application and the date of sealing such patent shall not prejudice the patent to be granted for the invention :

¹ Ins. by the Indian Patents and Designs (Amendment) Act, 1930 (7 of 1930), s. 3.

² Subs. by the A. O. for "G. G. in C."

³ Subs. by Act 7 of 1930, s. 3, for the original proviso.

(Part I.—Patents.)

Provided that an applicant shall not be entitled to institute any proceedings for infringement unless and until a patent for the invention has been granted to him.

8. [*Inquiry before sealing patent.*] Rep. by the Indian Patents and Designs (Amendment) Act, 1930 (VII of 1930), s. 4.

9. (1) Any person may, on payment of the prescribed fee, at any time within ¹[four] months from the date of the advertisement of the acceptance of an application, give notice at the Patent Office of opposition to the grant of the patent on any of the following grounds, namely :—

Opposition
to grant of
patent.

- (a) that the applicant obtained the invention from him, or from a person of whom he is the legal representative or assign ; or
- (b) that the invention has been claimed in any specification filed in British India which is or will be of prior date to the patent, the grant of which is opposed ; or
- (c) that the nature of the invention or the manner in which it is to be performed is not sufficiently or fairly described and ascertained in the specification ; or
- (d) that the invention has been publicly used in any part of British India or has been made publicly known in any part of British India ;

but on no other ground.

(2) Where such notice is given, the Controller shall give notice of the opposition to the applicant, and shall, on the expiration of those ²[four] months, after hearing the applicant and the opponent, if desirous of being heard, decide on the case.

(3) The decision of the Controller shall be subject to appeal to the ³[Central Government].

10. (1) If there is no opposition, or, in case of opposition, if the determination is in favour of the grant of a patent, a patent shall, on payment of the prescribed fee, be granted, subject to such conditions (if any) as the ³[Central Government] thinks expedient, to the applicant, or in the case of a joint application to the applicants jointly, and the Controller shall cause the patent to be sealed with the seal of the Patent Office.

Grant and
sealing of
patent.

⁴[(1A) Notwithstanding anything contained in sub-section (1), where—

- (a) an applicant has agreed in writing that on the grant to him of a patent he will assign it to another party or to a joint applicant and refuses to proceed with the application, or

¹ Subs. by the Indian Patents and Designs (Amendment) Act, 1930 (7 of 1930), s. 5, for "three".

² Subs. by the Repealing and Amending Act, 1937 (20 of 1937), s. 2 and Sch. I, for "three".

³ Subs. by the A. O. for "G. G. in C."

⁴ Ins. by Act 7 of 1930, s. 6.

(Part I.—Patents.)

(b) disputes arise between joint applicants as to proceeding with an application,
the Controller, if he is satisfied of the existence of such agreement or, in any other case, that any joint applicant or applicants ought to be allowed to proceed alone, may direct that such other party or joint applicant or applicants may proceed with the application accordingly and may grant a patent to him or them, as the case may be :

Provided that—

- (i) the Controller shall not give any such direction until every party interested has had an opportunity of being heard by him, and
- (ii) an appeal from any such direction shall lie to the ¹[Central Government].]

(2) A patent shall be sealed as soon as may be, and not after the expiration of eighteen months from the date of application :

Provided that,—

- (a) where the Controller has allowed an extension of the time within which an application may be accepted, a further extension of four months after the said eighteen months shall be allowed for the sealing of the patent ;
- (b) where the sealing is delayed by an appeal to the ¹[Central Government] ²* * * * or by opposition to the grant of the patent, the patent may be sealed at such time as the Controller may direct ;
- (c) where the patent is granted to the legal representative of an applicant who has died before the expiration of the time which would otherwise be allowed for sealing the patent, the patent may be sealed at any time within twelve months after the date of his death ;
- (d) where ³[for any reason] a patent cannot be sealed within the period allowed by ⁴[any of the foregoing provisions of] this section, that period may, on payment of the prescribed fee and on compliance with the prescribed conditions, be extended ⁵[to the extent applied for but not exceeding three months.]

Date of
patent.

11. Except as otherwise expressly provided by this Act, a patent shall be dated and sealed as of the date of the application :

Provided that no proceedings shall be taken in respect of an infringement committed before the ⁶[advertisement of the acceptance of the application].

¹ Subs. by the A. O. for " G. G. in C. "

² The words " or by a reference under section 8 " rep. by the Indian Patents and Designs (Amendment) Act, 1930 (7 of 1930), s. 6.

³ Subs. by s. 6, *ibid.*, for " in consequence of the neglect or failure of the applicant to pay any fee ".

⁴ Ins. by s. 6, *ibid.*

⁵ Subs. by s. 6, *ibid.*, for " to such an extent as may be prescribed ".

⁶ Subs. by s. 7, *ibid.*, for " publication of the specification ".

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12. (1) A patent sealed with the seal of the Patent Office shall, subject to the other provisions of this Act, confer on the patentee the exclusive privilege of making, selling and using the invention throughout British India and of authorizing others so to do. Effect, extent and form of patent.

(2) Every patent may be in the prescribed form and shall be granted for one invention only, but the specification may contain more than one claim; and it shall not be competent for any person in a suit or other proceeding to take any objection to a patent on the ground that it has been granted for more than one invention.

13. (1) A patent granted to the true and first inventor or his legal representative or assign shall not be invalidated by an application in fraud of him, or by protection obtained thereon or by any use or publication of the invention subsequent to that fraudulent application during the period of protection. Fraudulent applications for patents.

¹[(2) Where a patent has been revoked by the High Court on the ground that it has been obtained in fraud of the true and first inventor, or where the grant of a patent has been refused by the Controller under section 9 on the ground stated in clause (a) of sub-section (1) of that section, the Controller may, on the application of the true inventor or his legal representative or assign made in accordance with the provisions of this Act, grant to him a patent for the whole or any part of the invention, and the patent so granted shall bear the same date as the patent so revoked or, in the case of a patent the grant of which has been refused, the same date as would have been borne by the patent if it had been granted :

Provided that no suit shall be brought for any infringement of the patent so granted committed before the actual date when such patent was granted.]

Term of Patent.

14. (1) The term limited in every patent for the duration thereof shall, save as otherwise expressly provided by this Act, be ²[sixteen] years from its date. Term of patent.

³[(1A) Any patent the original term of which had not expired on or before the 1st day of July, 1930, shall have effect as if the term mentioned therein was sixteen years instead of fourteen years, and any license existing at that date which has been granted for the term of the patent shall be treated as having been granted for the term as so extended if the licensee so desires.

(1B) Where any party to a contract with the patentee or any other person entered into before the 1st day of January, 1930, is subjected to loss or liability by reason of the extension of the term of any patent under this section,

¹ Subs. by the Indian Patents and Designs (Amendment) Act, 1930 (7 of 1930), s. 8, for the original sub-section.

² Subs. by s. 9, *ibid.*, for "fourteen".

³ Ins. by s. 9, *ibid.*

(Part I.—Patents.)

any District Court having jurisdiction may determine in what manner and by which parties such loss or liability shall be borne.]

(2) A patent shall, notwithstanding anything therein or in this Act, cease if the patentee fails to pay the prescribed fees within the prescribed times :

¹[Provided that where the patentee, before, or within three months after, the expiration of the time for payment, applies to the Controller for an extension of time by any period not exceeding three months, the patent shall, on payment of such additional fee as may be prescribed, be continued or revived, as the case may be, during, but not beyond, the period of extension applied for.]

(3) If any proceeding is taken in respect of an infringement of the patent committed after a failure to pay any fee within the prescribed time, and before any enlargement thereof, the Court before which the proceeding is taken may, if it thinks fit, refuse to award any damages in respect of such infringement.

Extension of
term of
patent.

15. (1) A patentee may ²* * * present a petition to the ³[Central Government] praying that his patent may be extended for a further term ; but such petition must be left at the Patent Office at least six months before the time limited for the expiration of the patent and must be accompanied by the prescribed fee ⁴[and must be advertised by the patentee within the prescribed time and in the prescribed manner.]

(2) Any person may ⁴[within such time as may be prescribed and on payment of the prescribed fee] give notice to the Controller of objection to the extension.

(3) Where a petition is presented under sub-section (1), the ³[Central Government] may, as ⁵[it] thinks fit, dispose of the petition ⁶[itself] or refer it to a High Court for decision.

(4) If the petition be referred to a High Court, then on the hearing of such petition under this section, the patentee, and any person who has given notice under sub-section (2) of objection, shall be made parties to the proceeding, and the Controller shall be entitled to appear and be heard.

(5) The Court to which the petition is referred shall, in considering its decision, have regard to the nature and merits of the invention in relation to the public, to the profits made by the patentee as such, and to all the circumstances of the case.

(6) If it appears to the ³[Central Government] or to the High Court when the petition has been referred to it, that the patentee has been inadequately remunerated by his patent, the ³[Central Government] or the High Court, as the case may be, may by order extend the term of the patent for a further

¹ Subs. by the Indian Patents and Designs (Amendment) Act, 1930 (7 of 1930), s. 9, for the original proviso.

² The words " after advertising in the prescribed manner his intention to do so " rep. by s. 10, *ibid.*

³ Subs. by the A. O. for " G. G. in C. "

⁴ Ins. by Act 7 of 1930, s. 10.

⁵ Subs. by the A. O. for " he ".

⁶ Subs. by the A. O. for " himself ".

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term not exceeding ¹[five] or, in exceptional cases, ²[ten] years, or may order the grant of a new patent for such term as may be specified in the order and subject to the payment of such fees as may be prescribed and containing any restriction, conditions and provisions which the ³[Central Government] or the High Court, as the case may be, may think fit :

Provided that any patent so extended or granted shall, notwithstanding anything therein, or in this Act, cease if the inventor fails to pay before the expiration of each year the prescribed fee.

⁴[15A. (1) Where a patent for an invention has been applied for or granted, and the applicant or the patentee, as the case may be, applies for a further patent in respect of any improvement in or modification of the invention, he may in his application for the further patent request that the term limited in that patent for the duration thereof be the same as that of the original patent or so much of that term as is unexpired, and, if he does so, a patent (hereinafter referred to as a patent of addition) may be granted for such term as aforesaid.

Patents of addition.

(2) Save as otherwise expressly provided by this Act, a patent of addition shall remain in force as long as the patent for the original invention remains in force, but no longer, and in respect of a patent of addition no fees shall be payable for renewal :

Provided that if the patent for the original invention is revoked, then the patent of addition shall, if the authority by which it is revoked so orders, become an independent patent, and the fees payable, and the dates when they become payable, shall be determined by its date, but its duration shall not exceed the unexpired term of the patent for the original invention.

(3) The grant of a patent of addition shall be conclusive evidence that the invention is a proper subject for a patent of addition, and the validity of the patent shall not be questioned on the ground that the invention ought to have been the subject of an independent patent.]

16. (1) Where any patent has ceased owing to the failure of the patentee to pay any prescribed fee within the prescribed time, the patentee may apply to the Controller in the prescribed manner for an order for the restoration of the patent.

Restoration of lapsed patent.

(2) Every such application shall contain a statement of the circumstances which have led to the omission of the payment of the prescribed fee.

(3) If it appears from such statement that the omission was unintentional or unavoidable and that no undue delay has occurred in the making of the application, the Controller shall advertise the application in the prescribed manner, and within such time as may be prescribed any person may give notice of opposition at the Patent Office.

¹ Subs. by the Indian Patents and Designs (Amendment) Act, 1930 (7 of 1930), s. 10, for "seven".

² Subs. by s. 10, *ibid.*, for "fourteen".

³ Subs. by the A. O. for "G. G. in C."

⁴ Ins. by Act 7 of 1930, s. 11.

(Part I.—Patents.)

(4) Where such notice is given the Controller shall notify the applicant thereof.

(5) After the expiration of the prescribed period the Controller shall hear the case and, subject to an appeal to the ¹[Central Government] issue an order either restoring the patent subject to any conditions ²[and restrictions] deemed to be advisable or dismissing the application :

Provided that in every order under this section restoring a patent such provisions as may be prescribed shall be inserted for the protection of persons who may have availed themselves of the subject-matter of the patent after the patent had ceased.

Amendment of Application or Specification.

Amendment
of applica-
tion or
specification
by Controller.

17. (1) An applicant or a patentee may at any time, by request in writing left at the Patent Office and accompanied by the prescribed fee, seek leave to amend his application or specification, including drawings forming part thereof, by way of disclaimer, correction or explanation, stating the nature of, and the reasons for, the proposed amendment.

(2) If the application for a patent has not been accepted, the Controller shall determine whether and subject to what conditions (if any) the amendment shall be allowed.

(3) In any other case the request and the nature of the proposed amendment shall be advertised in the prescribed manner, and at any time within three months from its first advertisement any person may give notice at the Patent Office of opposition to the amendment.

(4) Where such a notice is given the Controller shall give notice of the opposition to the person making the request, and shall hear and decide the case.

(5) Where no notice of opposition is given, or the person so giving notice of opposition does not appear, the Controller shall determine whether and subject to what conditions, if any, the amendment ought to be allowed.

(6) The decision of the Controller in either case shall be subject to an appeal to the ¹[Central Government.]

(7) No amendment shall be allowed that would make the application or specification, as amended, claim an invention substantially larger than, or substantially different from, the invention claimed by the application or specification as it stood before amendment.

(8) Leave to amend shall be conclusive as to the right of the party to make the amendment allowed, except in case of fraud ; and the amendment shall be advertised in the prescribed manner, and shall in all Courts and for all purposes be deemed to form part of the application or specification.

¹ Subs. by the A. O. for "G. G. in C."

² Ins. by the Second Repealing and Amending Act, 1914 (17 of 1914), s. 2 and Sch. I.

(Part I.—Patents.)

(9) This section shall not apply when and so long as any suit for infringement or proceeding before a Court for the revocation of the patent is pending.

18. In any suit for infringement of a patent or proceeding before a Court for the revocation of a patent the Court may by order allow the patentee to amend his specification by way of disclaimer ¹[correction or explanation] in such manner, and subject to such terms as to costs, advertisement or otherwise, as the Court may think fit : Amendment of specification by the Court.

Provided that no amendment shall be so allowed that would make the specification, as amended, claim an invention substantially larger than, or substantially different from, the invention claimed by the specification as it stood before the amendment, and where an application for such an order is made to the Court notice of the application shall be given to the Controller, and the Controller shall have the right to appear and be heard.

19. Where an amendment of a specification by way of disclaimer, correction or explanation has been allowed under this Act, no damages shall be given in any suit in respect of the use of the invention ²[before the date of the decision allowing the amendment] unless the patentee establishes to the satisfaction of the Court that his original claim was framed in good faith and with reasonable skill and knowledge. Restriction on recovery of damages.

Register of Patents.

20. (1) There shall be kept at the Patent Office a book called the Register of Patents, wherein shall be entered the names and addresses of grantees of Patents, notifications of assignments and of transmissions of patents, of licenses under patents, and of amendment, extensions, and revocations of patents, and such other matters affecting the validity or proprietorship of patents as may be prescribed. Register of Patents.

(2) The register of inventions and address book existing at the commencement of this Act shall be incorporated with, and form part of, the register of patents under this Act.

(3) The register of patents shall be *prima facie* evidence of any matters by this Act directed or authorised to be inserted therein.

(4) Copies of deeds, licenses and any other documents affecting the proprietorship in any patent or in any license thereunder, must be supplied to the Controller in the prescribed manner for filing in the Patent Office ³* * * * *

¹ Ins. by the Indian Patents and Designs (Amendment) Act, 1930 (7 of 1930), s. 12.

² Subs. by s. 13, *ibid.*, for "before the disclaimer, correction or explanation".

³ The words "and, unless such copies have been so supplied, such deeds, licenses or other documents shall not be received as evidence of any transaction affecting a patent" rep. by s. 14, *ibid.*

(Part I.—Patents.)

Crown.

Patent to
bind Crown.

¹[21. (1) Subject to the other provisions of this section, a patent shall have to all intents the like effect as against His Majesty the King as it has against a subject.

(2) The officers or authorities administering any department of the service of His Majesty may, by themselves or by such of their agents, contractors or others as may be authorised in writing by them, at any time after the application, and after giving notice to the applicant or patentee, make, use or exercise the invention for the service of the Crown on such terms as may, either before or after the use thereof, be agreed on, with the approval of the ²[Central Government], between such officers or authorities and the applicant or patentee, or, in default of agreement, as may be settled in the manner hereinafter provided. And the terms of any agreement or license concluded between the applicant or patentee and any person other than such officers or authorities, shall be inoperative so far as concerns the making, use or exercise of the invention for the service of the Crown.

(3) Where an invention which is the subject of any patent has, before the date of the patent, been duly recorded in a document by, or tried by or on behalf of, the officers or authorities administering any department of the service of His Majesty (such invention not having been communicated directly or indirectly by the applicant or patentee), such officers or authorities, or such of their agents, contractors, or others, as may be authorised in writing by them, may, after giving notice to the applicant or patentee, make, use or exercise the invention so recorded or tried for the service of the Crown, free of any royalty or other payment to the applicant or patentee, notwithstanding the existence of the patent. If, in the opinion of such officers or authorities, the disclosure to the applicant or patentee, as the case may be, of the document recording the invention, or the evidence of the trial thereof, if required, would be detrimental to the public interest, it may be made confidentially to counsel on behalf of the applicant or patentee, or to any independent expert mutually agreed upon.

(4) In the event of any dispute as to the making, use or exercise of an invention under this section, or the terms therefor, or as to the existence or scope of any record or trial as aforesaid, the matter shall be referred to the High Court for decision, who shall have power to refer the whole matter or any question or issue of fact arising thereon to be tried before a special or official referee or an arbitrator upon such terms as it may direct. The Court, referee or arbitrator, as the case may be, may, with the consent of the parties, take into consideration the validity of the patent for the purposes only of the reference and for the determination of the issues between the applicant or patentee and such officers or authorities. The Court, referee, or arbitrator, further, in settling the terms as aforesaid, shall be entitled to take into consi-

¹ Ss. 21 and 21A were substituted by the Indian Patents and Designs (Amendment) Act, 1930 (7 of 1930), s. 15, for the original s. 21.

² Subs. by the A. O. for "G. G. in C."

(Part I.—Patents.)

deration any benefit or compensation which the applicant or patentee, or any other person interested in the patent, may have received directly or indirectly from the Crown or from such officers or authorities in respect of such patent :

Provided that, if the inventor or patentee is a Government servant and the subject-matter of the invention is certified by the ¹[Central Government] or ²[Provincial Government] to be connected with work done in the course of such service, any such dispute shall be settled by the ¹[Central Government] after hearing the applicant or patentee and any other person having an interest in the invention or patent.

(5) The right to use an invention for the services of the Crown under the provisions of this section, or any provisions for which this section is substituted, shall include, and shall be deemed always to have included, the power to sell any articles made in pursuance of such right which are no longer required for the services of the Crown.

(6) Nothing in this section shall affect the right of the Crown or of any person deriving title directly or indirectly from the Crown to sell or use any articles forfeited under any law for the time being in force relating to customs or excise.

³21A. (1) The inventor of any improvement in instruments or munitions of war may (either for or without valuable consideration) assign to the ⁴[Central Government] on behalf of His Majesty all the benefit of the invention and of any patent obtained or to be obtained for the invention; and the ⁴[Central Government] may be a party to the assignment.

Assignment
of patent
to the
Central
Government.

(2) The assignment shall effectually vest the benefit of the invention and patent in the ⁴[Central Government] on behalf of His Majesty, and all covenants and agreements therein contained for keeping the invention secret and otherwise shall be valid and effectual (notwithstanding any want of valuable consideration), and may be enforced accordingly by or on behalf of the ⁴[Central Government].

(3) Where any such assignment has been made, the ¹[Central Government] may, at any time before the publication of the specification, certify to the Controller that, in the interest of the public service, the particulars of the invention and of the manner in which it is to be performed should be kept secret.

(4) If the ¹[Central Government] so certify, the application and specifications, with the drawings (if any) and any amendment of the specification and any copies of such documents and drawings, shall, instead of being left in the ordinary manner at the Patent Office, be delivered to the Controller in a packet sealed by authority of the ¹[Central Government].

¹ Subs. by the A. O. for "G. G. in C."

² Subs. by the A. O. for "L. G."

³ See foot-note 1 on preceding page.

⁴ Subs. by the A. O. for "Secretary of State for India in Council".

(Part I.—Patents.)

(5) The packet shall, until the expiration of the term during which a patent for the invention may be in force, be kept sealed by the Controller, and shall not be opened save under the authority of an order of the ¹[Central Government].

(6) The sealed packet shall be delivered at any time during the continuance of the patent to any person authorised by the ¹[Central Government] to receive it, and shall, if returned to the Controller, be again kept sealed by him.

(7) On the expiration of the term of the patent, the sealed packet shall be delivered to the ¹[Central Government].

(8) Where the ¹[Central Government] certifies as aforesaid after an application for a patent has been left at the Patent Office but before the publication of the specification, the application and specifications, with the drawings (if any), shall be forthwith placed in a packet sealed by authority of the Controller, and the packet shall be subject to the foregoing provisions respecting a packet sealed by authority of the ¹[Central Government].

(9) No proceeding by petition or otherwise shall lie for revocation of a patent granted for an invention in relation to which a certificate has been given by the ¹[Central Government] as aforesaid.

(10) No copy of any specification or other document or drawing, by this section required to be placed in a sealed packet, shall in any manner whatever be published or open to the inspection of the public, but, save as otherwise provided in this section, the provisions of this Act shall apply in respect of any such invention and patent as aforesaid.

(11) The ¹[Central Government] may at any time waive the benefit of this section with respect to any particular invention, and the specifications, documents and drawings shall be thenceforth kept and dealt with in the ordinary way.

(12) The communication of any invention for any improvement in instruments or munitions of war to the Secretary of State for India in Council or the ¹[Central Government] or to any person or persons authorised by the Secretary of State for India in Council or the ¹[Central Government] to investigate the same or the merits thereof, shall not, nor shall anything done for the purposes of the investigation, be deemed use or publication of such invention so as to prejudice the grant or validity of any patent for the same.]

Compulsory Licenses and Revocation.

Compulsory
licenses and
revocation.

22. (1) Any person interested may present a petition to the ¹[Central Government] which shall be left at the Patent Office, together with the prescribed fee, alleging that ²[the demand for a patented article in British India is not being met to an adequate extent and on reasonable terms] and praying

¹ Subs. by the A. O. for "G. G. in C."

² Subs. by the Indian Patents and Designs (Amendment) Act, 1930 (7 of 1930), s. 16, for "the reasonable requirements of the public with respect to a patented invention have not been satisfied".

(Part I.—Patents.)

for the grant of a compulsory license, or, in the alternative, for the revocation of the patent.

(2) The ¹[Central Government] shall consider the petition, and if the parties do not come to an arrangement between themselves the ¹[Central Government] may, as ²[it] thinks fit, either dispose of the petition ³[itself] or refer it to a High Court for decision.

(3) The provisions of sub-section (4) of section 15, prescribing the procedure to be followed in the case of references to the Court under that section, shall apply in the case of references made to the Court under this section.

(4) If the ¹[Central Government] is of opinion, or, where a reference has been made under sub-section (2) to a High Court, that Court finds that ⁴[the demand for the patented article in British India is not being met to an adequate extent and on reasonable terms], the patentee may be ordered to grant licenses on such terms as the ¹[Central Government] or the High Court, as the case may be, may think just, or, if the ¹[Central Government] or the High Court is of opinion that ⁵[the demand will not be adequately met] by the grant of licenses, the patent may be revoked by order of the ¹[Central Government] or the High Court :

Provided that an order of revocation shall not be made before the expiration of four years from the date of the patent, or if the patentee gives satisfactory reasons for his default.

(5) For the purposes of this section ⁶[the demand for a patented article shall not be deemed to have been met to an adequate extent and on reasonable terms]—

- (a) if by reason of the default of the patentee to manufacture to an adequate extent and supply on reasonable terms the patented article, or any parts thereof which are necessary for its efficient working, or to carry on the patented process to an adequate extent or to grant licenses on reasonable terms, any existing trade or industry or the establishment of any new trade or industry in British India is unfairly prejudiced ⁷* * * * or,
- (b) if any trade or industry in British India is unfairly prejudiced by the conditions attached by the patentee ⁸* * * to the purchase, hire or use of the patented article or to the using or working of the patented process.

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¹ Subs. by the A. O. for "G. G. in C."

² Subs. by the A. O. for "he".

³ Subs. by the A. O. for "himself".

⁴ Subs. by the Indian Patents and Designs (Amendment) Act, 1930 (7 of 1930), s. 16, for "the reasonable requirements of the public with reference to the patented invention have not been satisfied".

⁵ Subs. by s. 16, *ibid.*, for "the reasonable requirements of the public will not be satisfied".

⁶ Subs. by s. 16, *ibid.*, for "the reasonable requirements of the public shall not be deemed to have been satisfied".

⁷ The words "or the demand for the patented article or the article produced by the patented process is not reasonably met" rep. by s. 16, *ibid.*

⁸ The words "before or after the commencement of this Act" rep. by s. 16, *ibid.*

⁹ Sub-section (6) rep. by s. 16, *ibid.*

(Part I.—Patents.)

Revocation
of patents
worked
outside
British India.

23. (1) At any time not less than four years after the date of a patent granted under this Act, any person may apply to the ¹[Central Government] ²[for relief under this section] on the ground that the patented article or process is manufactured or carried on exclusively or mainly outside British India.

(2) The ¹[Central Government] shall consider the application, and, if after inquiry ³[it] is satisfied—

- (a) that the allegations contained therein are correct ; and
- (b) that the applicant is prepared, and is in a position, to manufacture or carry on the patented article or process in British India ; and
- (c) that the patentee refuses to grant a license on reasonable terms,

then, subject to the provisions of this section, and unless the patentee proves that the patented article or process is manufactured or carried on to an adequate extent in British India, or gives satisfactory reasons why the article or process is not so manufactured or carried on, the ¹[Central Government] may make an order—

⁴[(a)] revoking the patent either—

- (i) forthwith ; or
- (ii) after such reasonable interval as may be specified in the order, unless in the meantime it is shown to ⁵[its] satisfaction that the patented article or process is manufactured or carried on within British India to an adequate extent ; ⁴[or

(b) ordering the patentee to grant a license to the applicant which may be a license exclusive to him or otherwise as the ¹[Central Government] may direct.]

(3) No order revoking a patent shall be made under the last sub-section which is at variance with any treaty, convention, arrangement or engagement with any foreign country or British possession.

(4) The ¹[Central Government] may, on the application of the patentee, extend the time limited in any order made under sub-section (2), clause (ii), for such period not exceeding two years as ³[it] may specify in a subsequent order, or revoke any order made under sub-section (2), clause (ii), or any subsequent order if sufficient cause is in ⁵[its] opinion shown by the patentee.

Operation of
order under
section 22 or
section 23.

⁶[23A. An order of the High Court under section 22 or of the ¹[Central Government] under section 22 or section 23, directing the grant of any license

¹ Subs. by the A. O. for "G. G. in C."

² Subs. by the Indian Patents and Designs (Amendment) Act, 1930 (7 of 1930), s. 17, for "for the revocation of the patent".

³ Subs. by the A. O. for "he".

⁴ Ins. by Act 7 of 1930, s. 17.

⁵ Subs. by the A. O. for "his".

⁶ Ins. by Act 7 of 1930, s. 18.

(Part I.—Patents.)

shall, without prejudice to any other method of enforcement, operate as if it were embodied in a deed granting a license and executed by the patentee and all other necessary parties.]

24. A patentee may at any time, by giving notice in the prescribed manner to the Controller, offer to surrender his patent, and the Controller may, if after giving notice of the offer and hearing all parties who desire to be heard he thinks fit, accept the offer, and thereupon make an order for the revocation of the patent.

Power of
Controller to
revoke
surrendered
patent.

25. A patent shall be deemed to be revoked if the ¹[Central Government] declares, by notification in the ²[Official Gazette] the patent or the mode in which it is exercised to be mischievous to the State or generally prejudicial to the public.

Revocation
of patent
on public
grounds.

Legal Proceedings.

26. (1) Revocation of a patent in whole or in part may be obtained on petition to a High Court on all or any of the following grounds, namely :—

Petition for
revocation
of patent.

- (a) that any invention included in the statement of claim is of no utility ;
- (b) that any invention included in the statement of claim was not, at the date of the application for a patent, a new invention within the meaning of this Act ;
- (c) that the applicant was not the true and first inventor thereof or the assign or legal representative of such inventor thereof ;
- (d) that the original or any amended application or specification does not fulfil the requirements of this Act ;
- (e) that the applicant has knowingly or fraudulently included in the application for a patent or in the original or any amended specification, as his invention, something which was not new or whereof he was neither the inventor nor the assign nor the legal representative of such inventor ;
- (f) that the original or any subsequent application relating to the invention, or the original or any amended specification, contains a wilful or fraudulent mis-statement ;
- (g) that ³[the whole or a part] of the invention or the manner in which ³[the whole or a part] is to be made and used as described in the original or any amended specification, is not thereby sufficiently described, and that this insufficiency was fraudulent or is injurious to the public.

(2) A petition for revocation of a patent may be presented—

- (a) by the Advocate General or any person authorized by him ; or

¹ Subs. by the A. O. for "G. G. in C."

² Subs. by the A. O. for "Gazette of India".

³ Subs. by the Indian Patents and Designs (Amendment) Act, 1930 (7 of 1930), s. 19, for "a part".

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(b) by any person alleging—

- (i) that the patent was obtained in fraud of his rights, or of the rights of any person under or through whom he claims ; or
- (ii) that he, or any person under or through whom he claims, was the true and first inventor of any invention included in the claim of the patentee ; or
- (iii) that he, or any person under or through whom he claims an interest in any trade, business or manufacture, had publicly manufactured, used or sold, within British India, before the date of the patent, anything claimed by the patentee as his invention.

(3) The High Court may, irrespective of any provisions of the Code of Civil Procedure, 1908, in this behalf, require any person, other than the Advocate General or any person authorized by him, applying for the revocation of a patent to give security for the payment of all costs incurred or likely to be incurred by any person appearing to oppose the petition.

Notice of
proceedings
to persons
interested.

27. (1) Notice of any petition for revocation of a patent under section 26 shall be served on all persons appearing from the register to be proprietors of that patent or to have shares or interests therein, and it shall not be necessary to serve the notice on any other person.

(2) The notice shall be deemed to be sufficiently served if a copy thereof is sent by post in a registered letter directed to the person and place for the time being stated in the register.

Framing
issue for
trial before
other Courts.

28. (1) A High-Court may, if it thinks fit, direct an issue for the trial, before itself or any other High Court, or any District Court, of any question arising upon a petition to itself under section 26, and the issue shall be tried accordingly.

(2) If the issue is directed to another High Court, the finding shall be certified by that Court to the High Court directing the issue.

(3) If the issue is directed to a District Court, the finding of that Court shall not be subject to appeal, but the evidence taken upon the trial shall be recorded and a copy thereof, certified by the Judge of the Court, shall be transmitted, together with any remarks which he may think fit to make thereon, to the High Court directing the issue, and the High Court may thereupon act upon the finding of the District Court, or dispose of the petition upon the evidence recorded, or direct a new trial, as the justice of the case may require.

Suits for
infringement
of patents.

29. (1) A patentee may institute a suit in a District Court having jurisdiction to try the suit against any person who, during the continuance of a patent acquired by him under this Act in respect of an invention, makes, sells or uses the invention without his license, or counterfeits it, or imitates it.

(Part I.—Patents.)

(2) Every ground on which a patent may be revoked under this Act shall be available by way of defence to a suit for infringement.

30. A patentee shall not be entitled to recover any damages in respect of any infringement of a patent granted after the commencement of this Act from any defendant who proves that at the date of the infringement he was not aware, nor had reasonable means of making himself aware, of the existence of the patent, and the marking of an article with the word "patent," "patented," or any word or words expressing or implying that a patent has been obtained for the article, stamped, engraved, impressed on, or otherwise applied to the article, shall not be deemed to constitute notice of the existence of the patent unless the word or words are accompanied by the year and number of the patent:

Exemption of innocent infringer from liability for damages.

Provided that nothing in this section shall affect any proceedings for an injunction.

31. In a suit for infringement of a patent, the Court may, on the application of either party, make such order for an injunction, inspection or account, and impose such terms and give such directions respecting the same and the proceedings thereon, as the Court may see fit.

Order for inspection, etc., in suit.

32. In a suit for infringement of a patent the Court may certify that the validity of the patent came in question, and if the Court so certifies, then in any subsequent suit in that Court for infringement of the same patent the plaintiff, on obtaining a final order or judgment in his favour, shall, unless the Court trying the suit otherwise directs, have his full costs, charges and expenses of and incidental to the said suit properly incurred.

Certificate of validity questioned and costs thereon.

33. A Court making a decree in a suit under section 29 or an order on a petition under section 26 shall send a copy of the decree or order, as the case may be, to the Controller, who shall cause an entry thereof and reference thereto to be made in the register of patents.

Transmission of decrees and orders to the Controller.

34. A High Court to which a petition has been presented under section 26 may stay proceedings on or dismiss the petition if in its opinion the petition would be disposed of more justly or conveniently by another High Court.

Power of High Court to stay proceedings, etc.

35. (1) In a suit or proceeding for infringement or revocation of a patent, the Court may, if it thinks fit, and shall on the request of ¹[all] the parties to the proceedings, call in the aid of an assessor specially qualified, and try the case wholly or partially with his assistance.

Hearing with assessor.

(2) A Court exercising appellate jurisdiction in respect of such suit or proceeding may, if it thinks fit, call in the aid of an assessor as aforesaid.

(3) The remuneration, if any, to be paid to an assessor under this section shall in every case be determined by the Court and be paid by it as part of the expenses of the execution of this Act.

²[**35A.** Notwithstanding anything contained in section 19, if the Court in any action for infringement of a patent finds that any one or more of the

Grant of relief in respect of

¹ Subs. by the Indian Patents and Designs (Amendment) Act, 1930 (7 of 1930), s. 20, for "either of".

² Ins. by s. 21, *ibid.*

(Part I.—Patents.)

particular
claims.

claims in the specification in respect of which the infringement is alleged are valid, it may, subject to its discretion as to costs and as to the date from which damages should be reckoned and to such terms as to amendment as it may deem desirable, grant relief in respect of any of such claims which are infringed without regard to the invalidity of any other claim in the specification. In exercising such discretion the Court may take into consideration the conduct of the parties in inserting such invalid claims in the specification or permitting them to remain there.]

Remedy in
case of
groundless
threats of
legal pro-
ceedings.

36. Where any person claiming ¹[to have an interest in a patent] by circulars, advertisements or otherwise, threatens any other person with any legal proceedings or liability in respect of any alleged infringement of the patent, any person aggrieved thereby may bring a suit against him in a District Court having jurisdiction to try the suit, and may obtain an injunction against the continuance of such threats, and may recover such damage (if any) as he has sustained thereby, if the alleged infringement to which the threats related was not in fact an infringement of ²[the patent]:

³[Provided that this section shall not apply if an action for infringement of the patent is commenced and prosecuted with due diligence.]

Miscellaneous.

Grant of
patents to
two or more
persons.

37. Where, after the commencement of this Act, a patent is granted to two or more persons jointly, they shall, unless otherwise specified in the patent, be treated for the purpose of the devolution of the legal interest therein as joint tenants, but, subject to any contract to the contrary, each of such persons shall be entitled to use the invention for his own profit without accounting to the others, but shall not be entitled to grant a license without their consent, and, if any such person dies, his beneficial interest in the patent shall devolve on his legal representatives.

Novelty of
invention.

38. (1) An invention shall be deemed a new invention within the meaning of this Act—

- (a) if it has not, before the date of the application for a patent thereon, been publicly used in any part of British India, or been made publicly known in any part of British India, and
- (b) if the inventor has not by secret or experimental user made direct or indirect profits from his invention in excess of such an amount as the Court or the ⁴[Central Government], as the case may be, may, in consideration of all the circumstances of the case, deem reasonable.

¹ Subs. by the Indian Patents and Designs (Amendment) Act, 1930 (7 of 1930), s. 22 for "to be the patentee of an invention".

² Subs. by s. 22, *ibid.*, for "any legal rights of the person making such threats".

³ Subs. by s. 22, *ibid.*, for original proviso.

⁴ Subs. by the A. O. for "G. G. in C."

(Part I.—Patents.)

(2) The public use or knowledge of an invention before the date of the application for a patent thereon shall not be deemed a public use or knowledge within the meaning of this Act if the knowledge has been obtained surreptitiously or in fraud of the true and first inventor or has been communicated to the public in fraud of such inventor or in breach of confidence :

Provided that such inventor has not acquiesced in the public use of his invention, and that, within six months after the commencement of that use, he applies for a patent.

39. If a patent is lost or destroyed, or its non-production is accounted for to the satisfaction of the Controller, the Controller may at any time, on payment of the prescribed fee, seal a duplicate thereof. Loss or destruction of patent.

40. (1) The exhibition of an invention at an industrial or international exhibition, certified as such by the ¹[Central Government], or the publication of any description of the invention during the period of the holding of the exhibition, or the use of the invention for the purpose of the exhibition in the place where the exhibition is held, or the use of the invention during the period of the holding of the exhibition by any person elsewhere, without the privity or consent of the inventor, shall not prejudice the right of the inventor to apply for and obtain a patent in respect of the invention or the validity of any patent granted on the application : Provisions as to exhibitions.

Provided that—

- (a) the exhibitor, before exhibiting the invention, gives the Controller the prescribed notice of his intention to do so ; and
- (b) the application for a patent is made before or within six months from the date of the opening of the exhibition.

(2) The ¹[Central Government] may, by notification in the ²[Official Gazette], apply this section to any exhibition mentioned in the notification in like manner as if it were an industrial or international exhibition certified as such by the ¹[Central Government], and any such notification may provide that the exhibitor shall be relieved from the condition of giving notice to the Controller of his intention to exhibit, and shall be so relieved either absolutely or upon such terms and conditions as may be stated in the notification.

41. The trustees of the Indian Museum may at any time require a patentee to furnish them with a model or sample of his invention on payment to the patentee of the cost of the manufacture of the model or sample, the amount to be settled, in case of dispute, by the ¹[Central Government]. Models to be furnished to Indian Museum.

42. (1) A patent shall not prevent the use of an invention for the purposes of the navigation of a foreign vessel within the jurisdiction of any Court in Foreign vessels in British

¹ Subs. by the A. O. for "G. G. in C."

² Subs. by the A. O. for "Gazette of India".

³ The provisions of s. 42 apply to the use of an invention on aircraft not registered in British India in like manner as they apply to the use of an invention in a foreign vessel,—see the Indian Aircraft Act, 1934 (22 of 1934), s. 15.

(Part I.—Patents. Part II.—Designs.)

Indian
waters.

British India, or the use of an invention in a foreign vessel within that jurisdiction, provided it is not used therein for or in connection with the manufacture or preparation of anything intended to be sold in or exported from British India.

(2) This section shall not extend to vessels of any foreign State of which the laws do not confer corresponding rights with respect to the use of inventions in British vessels while in the ports of that State, or in the waters within the jurisdiction of its Courts.

PART II.

DESIGNS.

Registration of Designs.

Application
for registra-
tion of
designs.

43. (1) The Controller may, on the application of any person claiming to be the proprietor of any new or original design not previously published in British India, register the design under this Part.

(2) The application must be made in the prescribed form and must be left at the Patent Office in the prescribed manner and must be accompanied by the prescribed fee.

(3) The same design may be registered in more than one class, and, in case of doubt as to the class in which a design ought to be registered, the Controller may decide the question.

(4) The Controller may, if he thinks fit, refuse to register any design presented to him for registration; but any person aggrieved by any such refusal may appeal to the ¹[Central Government].

(5) An application which, owing to any default or neglect on the part of the applicant, has not been completed so as to enable registration to be effected within the prescribed time shall be deemed to be abandoned.

(6) A design when registered shall be registered as of the date of the application for registration.

Registration
of designs in
new classes.

44. Where a design has been registered in one or more classes of goods, the application of the proprietor of the design to register it in some one or more other classes shall not be refused, nor shall the registration thereof be invalidated—

(a) on the ground of the design not being a ²[new or original design,] by reason only that it was so previously registered; or

(b) on the ground of the design having been previously published in British India, by reason only that it has been applied to goods of any class in which it was so previously registered:

¹ Subs. by the A. O. for "G. G. in C."

² Subs. by the Indian Patents and Designs (Amendment) Act, 1930 (7 of 1930), s. 23, for "new and original design".

(Part II.—Designs.)

¹[Provided that such subsequent registration shall not extend the period of copyright in the design beyond that arising from previous registration.]

45. (1) The Controller shall grant a certificate of registration to the proprietor of the design when registered. Certificate of registration.

(2) The Controller may, in case of loss of the original certificate, or in any other case in which he deems it expedient, furnish one or more copies of the certificate.

46. (1) There shall be kept at the Patent Office a book called the Register of Designs, wherein shall be entered the names and addresses of proprietors of registered designs, notifications of assignments and of transmissions of registered designs, and such other matters as may be prescribed. Register of Designs.

(2) The register of designs existing at the commencement of this Act shall be incorporated with and form part of the register of designs under this Act.

(3) The register of designs shall be *prima facie* evidence of any matters by this Act directed or authorized to be entered therein.

Copyright in Registered Designs.

47. (1) When a design is registered, the registered proprietor of the design shall, subject to the provisions of this Act, have copyright in the design during five years from the date of registration. Copyright on registration.

(2) If within the prescribed time before the expiration of the said five years application for the extension of the period of copyright is made to the Controller in the prescribed manner, the Controller shall, on payment of the prescribed fee, extend the period of copyright for a second period of five years from the expiration of the original period of five years.

(3) If within the prescribed time before the expiration of such second period of five years application for the extension of the period of copyright is made to the Controller in the prescribed manner, the Controller may, subject to any rules under this Act, on payment of the prescribed fee, extend the period of copyright for a third period of five years from the expiration of the second period of five years.

48. (1) Before delivery on sale of any articles to which a registered design has been applied, the proprietor shall— Requirements before delivery on sale.

(a) (if exact representations or specimens were not furnished on the application for registration), furnish to the Controller the prescribed number of exact representations or specimens of the design; and, if he fails to do so, the Controller may erase his name from the register, and thereupon the copyright in the design shall cease; and

(b) cause each such article to be marked with the prescribed mark, or with the prescribed words or figures, denoting that the design is registered; and, if he fails to do so, the proprietor shall not

¹ Ins. by the Indian Patents and Designs (Amendment) Act, 1930 (7 of 1930), s. 23.

(Part II.—Designs.)

be entitled to recover any penalty or damages in respect of any infringement of his copyright in the design unless he shows that he took all proper steps to ensure the marking of the article, or unless he shows that the infringement took place after the person guilty thereof knew or had received notice of the existence of the copyright in the design.

(2) Where a representation is made to the ¹[Central Government] by or on behalf of any trade or industry that in the interests of the trade or industry it is expedient to dispense with or modify as regards any class or description of articles any of the requirements of this section as to marking, the ¹[Central Government] may, if ²[it] thinks fit, by rule under this Act, dispense with or modify such requirements as regards any such class or description of articles to such extent and subject to such conditions as ²[it] thinks fit.

Effect of
disclosure
on copyright.

49. The disclosure of a design by the proprietor to any other person, in such circumstances as would make it contrary to good faith for that other person to use or publish the design, and the disclosure of a design in breach of good faith by any person other than the proprietor of the design, and the acceptance of a first and confidential order for goods bearing a new or original textile design intended for registration, shall not be deemed to be a publication of the design sufficient to invalidate the copyright thereof if registration thereof is obtained subsequently to the disclosure or acceptance.

Inspection of
registered
designs.

50. (1) During the existence of copyright in a design, or such shorter period not being less than two years from the registration of the design as may be prescribed, the design shall not be open to inspection except by the proprietor or a person authorized in writing by him, or a person authorized by the Controller or by the Court, and furnishing such information as may enable the Controller to identify the design, and shall not be open to the inspection of any person except in the presence of the Controller, or of an officer acting under him, and on payment of the prescribed fee; and the person making the inspection shall not be entitled to take any copy of the design, or of any part thereof:

Provided that, where registration of a design is refused on the ground of identity with a design already registered, the applicant for registration shall be entitled to inspect the design so registered.

(2) After the expiration of the copyright in a design, or such shorter period as aforesaid, the design shall be open to inspection, and copies thereof may be taken by any person on payment of the prescribed fee.

(3) Different periods may be prescribed under this section for different classes of goods.

Information
as to existence
of copyright.

51. On the request of any person furnishing such information as may enable the Controller to identify the design, and on payment of the prescribed

¹ Subs. by the A. O. for "G. G. in C."

² Subs. by the A. O. for "he".

(Part II.—Designs.)

fee, the Controller shall inform such person whether the registration still exists in respect of the design, and, if so, in respect of what classes of goods, and shall state the date of registration, and the name and address of the registered proprietor.

¹[51A. (1) Any person interested may present a petition for the cancellation of the registration of a design—

Cancellation
of registra-
tion.

(a) at any time after the registration of the design, to the High Court on any of the following grounds, namely :—

(i) that the design has been previously registered in British India ; or

(ii) that it has been published in British India prior to the date of registration ; or

(iii) that the design is not a new or original design ; or

(b) within one year from the date of the registration, to the Controller on either of the grounds specified in sub-clauses (i) and (ii) of clause (a).

(2) An appeal shall lie from any order of the Controller under this section to the High Court, and the Controller may at any time refer any such petition to the High Court, and the High Court shall decide any petition so referred.

51B. The provisions of section 21 shall apply to registered designs as if those provisions were re-enacted herein and in terms made applicable to registered designs.]

Registration
of designs to
bind the
Crown.

Industrial and International Exhibitions.

52. (1) The exhibition at an industrial or international exhibition certified as such by the ²[Central Government], or the exhibition elsewhere during the period of the holding of the exhibition, without the privity or consent of the proprietor, of a design, or of any article to which a design is applied, or the publication, during the holding of any such exhibition, of a description of a design, shall not prevent the design from being registered, or invalidate the registration thereof:

Provisions
as to exhibi-
tions.

Provided that—

(a) the exhibitor, before exhibiting the design or article, or publishing a description of the design, gives the Controller the prescribed notice of his intention to do so ; and

(b) the application for registration is made before or within six months from the date of the opening of the exhibition.

(2) The ²[Central Government] may, by notification in the ³[Official Gazette], apply this section to any exhibition mentioned in the notification

¹ Ss. 51A and 51B ins. by the Indian Patents and Designs (Amendment) Act, 1930 (7 of 1930), s. 24.

² Subs. by the A. O. for "G. G. in C."

³ Subs. by the A. O. for "Gazette of India".

(Part II.—Designs.)

in like manner as if it were an industrial or international exhibition certified as such by the ¹[Central Government], and any such notification may provide that the exhibitor shall be relieved from the condition of giving notice to the Controller of his intention to exhibit, and shall be so relieved either absolutely or upon such terms and conditions as may be stated in the notification.

Legal Proceedings.

Piracy of
registered
design.

53. (1) During the existence of copyright in any design it shall not be lawful for any person—

- (a) for the purpose of sale to apply or cause to be applied to any article in any class of goods in which the design is registered the design or any fraudulent or obvious imitation thereof, except with the license or written consent of the registered proprietor, or to do anything with a view to enable the design to be so applied ; or,
- (b) knowing that the design or any fraudulent or obvious imitation thereof has been applied to any article without the consent of the registered proprietor, to publish or expose or cause to be published or exposed for sale that article.

(2) If any person acts in contravention of this section, he shall be liable for every contravention—

- (a) to pay to the registered proprietor of the design a sum not exceeding five hundred rupees recoverable as a contract debt, or
- (b) if the proprietor elects to bring a suit for the recovery of damages for any such contravention, and for an injunction against the repetition thereof, to pay such damages as may be awarded and to be restrained by injunction accordingly :

Provided that the total sum recoverable in respect of any one design under clause (a) shall not exceed one thousand rupees.

(3) When the Court makes a decree in a suit under sub-section (2), it shall send a copy of the decree to the Controller, who shall cause an entry thereof to be made in the register of designs.

Application
of certain
provisions of
the Act as to
patents to
designs.

54. The provisions of this Act with regard to certificates of the validity of a patent, and to the remedy in case of groundless threats of legal proceedings by a patentee shall apply in the case of registered designs in like manner as they apply in the case of patents, with the substitution of references to the copyright in a design for references to a patent, and of references to the proprietor of a design for references to the patentee, and of references to the design for references to the invention.

¹ Subs. by the A. O. for "G. G. in C."

(Part III.—General.)

PART III.

GENERAL.

Patent Office and Proceedings thereat.

55. (1) The ¹[Central Government] may provide for the purposes of this Patent Office, an office which shall be called, and is in this Act referred to as, the Patent Office.

(2) The Patent Office shall be under the immediate control of the Controller of Patents and Designs, who shall act under the superintendence and direction of the ¹[Central Government].

(3) There shall be a seal for the Patent Office.

(4) Any act or thing directed to be done by or to the Controller may be done by or to any officer authorized by the ¹[Central Government].

56. The ¹[Central Government] may appoint the Controller, and so many Officers and clerks, with such designations and duties, as ²[it] thinks fit.

Fees.

57. (1) There shall be paid in respect of the grant of patents and the registration of designs, and applications therefor, and in respect of other matters with relation to the patents and designs under this Act, such fees as may be prescribed by the ¹[Central Government], so however that the fees prescribed in respect of the instruments and matters mentioned in the schedule shall not exceed those there specified.

(2) A proceeding in respect of which a fee is payable under this Act or the rules made thereunder shall be of no effect unless the fee has been paid.

Provisions as to Registers and other Documents in the Patent Office.

58. There shall not be entered in any register kept under this Act, or be receivable by the Controller, any notice of any trust, expressed, implied or constructive.

59. Every register kept under this Act shall at all convenient times be open to the inspection of the public, subject to the provisions of this Act; and certified copies, sealed with the seal of the Patent Office, of any entry in any such register shall be given to any person requiring the same on payment of the prescribed fee.

60. Reports of or to the Controller made under this Act shall not in any case be published or be open to public inspection.

61. (1) Where an application for a patent has been abandoned or become void, the specifications and drawings (if any), accompanying or left in connection with such application, shall not, save as otherwise expressly

¹ Subs. by the A. O. for "G. G. in C."

² Subs. by the A. O. for "he".

(Part III.—General.)

etc.,
where appli-
cation aban-
doned, etc.

provided by this Act, at any time be open to public inspection or be published by the Controller.

(2) Where an application for a design has been abandoned or refused, the application and any drawings, photographs, tracings, representations or specimens left in connection with the application shall not at any time be open to public inspection or be published by the Controller.

Power for
Controller to
correct
clerical errors.

62. The Controller may, on request in writing accompanied by the prescribed fee,—

(a) correct any clerical error in or in connection with an application for a patent or in any patent or any specification ;

1* * * * *

(c) correct any clerical error in the representation of a design or in the name or address of the proprietor of any patent or design, or in any other matter which is entered upon the register of patents or the register of designs.

Entry of
assignments
and trans-
missions in
registers.

63. ²[(1) Where a person becomes entitled by assignment, transmission or other operation of law to a patent or to the copyright in a registered design, he may make application to the Controller to register his title, and the Controller shall, on receipt of such application and on proof of title to his satisfaction, register him as the proprietor of such patent or design, and shall cause an entry to be made in the prescribed manner in the register of the assignment, transmission or other instrument affecting the title.

(2) Where any person becomes entitled as mortgagee, licensee or otherwise to any interest in a patent or registered design, he may make application to the Controller to register his title, and the Controller shall, on receipt of such application and on proof of title to his satisfaction, cause notice of the interest to be entered in the prescribed manner in the register of patents or designs, as the case may be, with particulars of the instrument, if any, creating such interest.]

(3) The person registered as the proprietor of a patent or design shall, subject to the provisions of this Act and to any rights appearing from the register to be vested in any other person, have power absolutely to assign, grant licenses as to, or otherwise deal with, the patent or design and to give effectual receipts for any consideration for any such assignment, license or dealing :

Provided that any equities in respect of the patent or design may be enforced in like manner as in respect of any other moveable property.

³[(4) Except in the case of an application made under section 64, a document or instrument in respect of which no entry has been made in the register in accordance with the provisions of sub-sections (1) and (2) shall

¹ Cl. (b) rep. by the Indian Patents and Designs (Amendment) Act, 1930 (7 of 1930), s. 25.

² Subs. by s. 26, *ibid.*, for original sub-sections (1) and (2).

³ Ins. by s. 26, *ibid.*

(Part III.—General.)

not be admitted in evidence in any Court in proof of the title to a patent or to copyright in a design or to any interest therein, unless the Court, for reasons to be recorded in writing, otherwise directs.]

64. (1) ¹[The Controller] may, on the application in the prescribed manner of any person aggrieved by the non-insertion in or omission from the register of patents or designs of any entry, or by any entry made in either such register without sufficient cause, or by any entry wrongly remaining on either such register, or by an error or defect in any entry in either such register, make such order for making, expunging or varying such entry ²[as he thinks fit and rectify the register accordingly]. Rectification of register.

(2) The ³[Controller] may in any proceeding under this section decide any question that it may be necessary or expedient to decide in connection with the rectification of a register.

⁴[(3) An appeal shall lie to the High Court from any order of the Controller under this section; and the Controller may refer any application under this section to the High Court for decision, and the High Court shall dispose of any application so referred.]

(4) Any order of the Court rectifying a register shall direct that notice of the rectification be served on the Controller in the prescribed manner, who shall upon the receipt of such notice rectify the register accordingly.

⁵[(5) Nothing in this section shall be deemed to empower the Controller—

(a) to rectify the register of patents, or to decide any question relating to a patent, otherwise than for the purpose of correcting a mistake of fact apparent from a reference either to the patent itself or to some order of a competent authority made under any other provision of this Act, or

(b) to make any such order cancelling the registration of a design as is provided for in section 51A.]

Powers and Duties of Controller.

65. Subject to any rules in this behalf, the Controller in any proceedings before him under this Act shall have the powers of a Civil Court for the purpose of receiving evidence and administering oaths and enforcing the attendance of witnesses and compelling the production of documents and awarding costs. Powers of Controller in proceedings under Act.

66. The Controller shall issue periodically a publication of patented inventions containing such information as the ⁶[Central Government] may direct. Publication of patented inventions.

¹ Subs. by the Indian Patents and Designs (Amendment) Act, 1930 (7 of 1930), s. 27, for "A High Court".

² Subs. by s. 27, *ibid.* for "as it may think fit".

³ Subs. by s. 27, *ibid.* for "Court".

⁴ Subs. by s. 27, *ibid.* for original sub-section (3).

⁵ Subs. by s. 27, *ibid.* for original sub-section (5).

⁶ Subs. by the A. O. for "G. G. in C."

(Part III.—General.)

Exercise of
discretionary
power by
Controller.

67. Where any discretionary power is by or under this Act given to the Controller, he shall not exercise that power adversely to the applicant for a patent, or for amendment of an application or of a specification, or for registration of a design, without (if so required within the prescribed time by the applicant) giving the applicant an opportunity of being heard.

Power of
Controller
to take
directions
of the Central
Government.

68. The Controller may, in any case of doubt or difficulty arising in the administration of any of the provisions of this Act, apply to the ¹[Central Government] for directions in the matter.

Refusal to
grant patent,
etc., in certain
cases.

69. ²[(1)] The Controller may refuse to grant a patent for an invention or to register a design, of which the use would, in his opinion, be contrary to law or morality.

³[(2)] An appeal shall lie to the ¹[Central Government] from an order of the Controller under this section.]

Appeals to
the Central
Government.

70. (1) Where an appeal is declared by this Act to lie from the Controller to the ¹[Central Government], the appeal shall be made within ⁴[three] months of the date of the order passed by the Controller, and shall be in writing, and accompanied by the prescribed fee.

(2) In calculating the said period of ⁴[three] months the time (if any) occupied in granting a copy of the order appealed against shall be excluded.

(3) The ¹[Central Government] may, if ⁵[it] thinks fit, obtain the assistance of an expert in deciding such appeals, and the decision of the ¹[Central Government] shall be final.

Evidence, etc.

Certificate of
Controller
to be
evidence.

71. A certificate purporting to be under the hand of the Controller as to any entry, matter or thing which he is authorized by this Act, or any rules made thereunder, to make or do, shall be *prima facie* evidence of the entry having been made, and of the contents thereof, and of the matter or thing having been done or left undone.

Transmission
of certified
printed copies
of specifica-
tions, etc.

72. Copies of all specifications, drawings and amendments left at the Patent Office after the commencement of this Act, printed for and sealed with the seal of the Patent Office, shall be transmitted as soon as may be, after they have been accepted or allowed at the Patent Office, to ⁶[the Provincial Governments of Madras and Bombay] and to such other authorities as the ¹[Central Government] may appoint in this behalf, and shall be open to the inspection of any person at all reasonable times at places to be appointed by those authorities.

¹Subs. by the A. O. for "G. G. in C."

²The original s. 69 was re-numbered as sub-section (1) of that section by the Indian Patents and Designs (Amendment) Act, 1930 (7 of 1930), s. 28.

³Sub-section (2) ins. by s. 28, *ibid.*

⁴Subs. by s. 29, *ibid.* for "two".

⁵Subs. by the A. O. for "he".

⁶Subs. by the A. O. for "the Governor of Fort St. George in Council, the Governor of Bombay in Council, the Lieutenant Governor of Burma".

(Part III.—General.)

73. Any application, notice or other document authorized or required to be left, made or given at the Patent Office or to the Controller, or to any other person under this Act, may be sent by post. Applications and notices by post.

74. (1) If any person is, by reason of infancy, lunacy or other disability, incapable of making any statement or doing anything required or permitted by or under this Act, the lawful guardian, committee or manager (if any) of the person subject to the disability, or if there be none, any person appointed by any Court possessing jurisdiction in respect of his property, may make such statement or a statement as nearly corresponding thereto as circumstances permit, and do such thing in the name and on behalf of the person subject to the disability. Declaration by infant, lunatic, etc.

(2) An appointment may be made by the Court for the purposes of this section upon the petition of any person acting on behalf of the person subject to the disability or of any other person interested in the making of the statement or the doing of the thing.

¹[74A. Where a person giving notice of any opposition under this Act or giving notice to the Court of appeal from any decision of the Controller under this Act, neither resides nor carries on business in British India, the Controller or the Court, as the case may be, may require such person to give security for the payment of all costs incurred and likely to be incurred in the proceedings or appeal, as the case may be, and, in default of such security being given, may disallow the opposition or dismiss the appeal.] Security for costs.

Agency.

75. The following documents, namely,—

- (1) applications for a patent,
- (2) notices of opposition,
- (3) applications for extension of term of a patent,
- (4) applications for the restoration of lapsed patents,
- (5) applications for leave to amend,
- (6) applications for compulsory license or revocation, and
- (7) notices of surrenders of patent,

shall be signed and verified, in the manner prescribed, by the person making such applications or giving such notices :

Provided that, if such person is absent from British India, they may be signed and verified on his behalf by an agent resident in British India authorized by him in writing in that behalf.

Subscription and verification of certain documents.

¹ Ins. by the Indian Patents and Designs (Amendment) Act, 1930 (7 of 1930), s. 30.

(Part III.—General.)

Agency.

76. (1) All other applications and communications to the Controller under this Act may be signed by, and all attendances upon the Controller may be made by or through a legal practitioner or by or through an agent authorised to the satisfaction of the Controller.

(2) The Controller may, if he sees fit, require—

- (a) any such agent to be resident in British India ;
- (b) any person not residing in British India to employ an agent residing in British India ;
- (c) the personal signature or presence of any applicant, opponent or other person.

Powers, etc. of ¹[Central Government].

Power for
Central
Government
to make
rules.

77. (1) The ¹[Central Government] may make such rules² as ³[it] thinks expedient subject to the provisions of this Act—

- (a) for regulating the practice of registration under this Act ;
- (b) for classifying goods for the purposes of designs ;
- (c) for making or requiring duplicates of specifications, drawings and other documents ;
- (d) for securing and regulating the publishing and selling of copies, at such prices and in such manner as the ¹[Central Government] thinks fit, of specifications, drawings and other documents ;
- (e) for securing and regulating the making, printing, publishing, and selling of indexes to, and abridgments of, specifications and other documents in the Patent Office ; and providing for the inspection of indexes and abridgments and other documents ;
- ⁴[(ee) for the manner in which fees leviable under this Act may be paid ;
- (eee) for ensuring secrecy with respect to patents to which section 21A applies ;]

¹ Subs. by the A. O. for "G. G. in C."

² For the Indian Patents and Designs Rules, 1933, see Gazette of India, Pt. II, dated 11th February, 1933.

³ Subs. by the A. O. for "he".

⁴ Ins. by the Indian Patents and Designs (Amendment) Act, 1930 (7 of 1930), s. 31.

(Part III.—General.)

- (f) generally for regulating the business of the Patent Office, the conduct of proceedings before the Controller, and all things by this Act placed under the direction or control of the Controller or of the ¹[Central Government]; and
- (g) generally for the purpose of carrying into effect the provisions of this Act.

(2) The power to make rules under this section shall be subject to the condition of the rules being made after previous publication.

²[(2A) Nothing in sub-section (2) shall apply in the case of rules made for the purpose specified in clause (eee) of sub-section (1); and any such rules may modify any of the provisions of this Act so far as may be necessary for that purpose.]

(3) All rules made under this section shall be published in the ³[Official Gazette], and on such publication shall have effect as if enacted in this Act.

Offences.

78. If any person uses on his place of business, or on any document issued by him, or otherwise, the words "Patent Office," or any other words suggesting that his place of business is officially connected with, or is, the Patent Office, he shall be punishable with fine which may extend to two hundred rupees, and, in the case of a continuing offence, with further fine of twenty rupees for each day on which the offence is continued after conviction therefor.

⁴[*Reciprocal arrangements with the United Kingdom and other parts of His Majesty's dominions.*]

78A. (1) If His Majesty is pleased by Order in Council to apply such of the provisions of section 91 of the Patents and Designs Act, 1907, as relate to inventions or designs, to British India, then any person who has applied for protection for any invention or design in the United Kingdom, ⁵[or his legal representative or assignee] shall be entitled to a patent for his invention or to registration of his design under this Act, in priority to other applicants; and the patent or registration shall have the same date as the date of the application in the United Kingdom:

Provided that—

- (a) the application is made in the case of a patent within twelve months, and, in the case of a design, within ⁶[six] months from the application for protection in the United Kingdom: and

¹Subs. by the A. O. for "G. G. in C."

²Ins. by the Indian Patents and Designs (Amendment) Act, 1930 (7 of 1930), s. 31.

³Subs. by the A. O. for "Gazette of India".

⁴The heading and s. 78A were ins. by the Indian Patents and Designs (Amendment) Act, 1920 (29 of 1920), s. 2.

⁵Ins. by the Repealing and Amending Act, 1923 (11 of 1923), s. 2 and Sch. I.

⁶Subs. by Act 7 of 1930, s. 32, for "four".

(Part III.—General.)

(b) nothing in this section shall entitle the patentee or the proprietor of the design to recover damages for infringements happening prior to the actual date on which, in the case of a patent, his application is accepted, or, in the case of a design, the design is registered, in British India.

(2) The patent granted for an invention or the registration of a design shall not be invalidated—

(a) in the case of a patent, by reason only of the publication of a description of, or use of, the invention, or

(b) in the case of a design, by reason only of the exhibition or use of, or the publication of a description or representation of, the design,

in British India during the period specified in this section as that within which the application may be made.

(3) The application for the grant of a patent or the registration of a design under this section must be made in the same manner as an ordinary application under this Act :

Provided that, in the case of a patent, if the application is not accepted within twelve months from the date of the application for protection in the United Kingdom, the specification and the drawings (if any) supplied therewith shall be open to public inspection at the expiration of that period.

(4) Where it is made to appear to the ¹[Central Government] that the legislature of any other part of His Majesty's dominions ²[or of any State in India] has made satisfactory provision for the protection of inventions or designs, patented or registered in British India, the ¹[Central Government] may, by notification³ in the ⁴[Official Gazette], direct that the provisions of this section, with such variations or additions, if any, as may be set out in such notification, shall apply for the protection of inventions or designs patented or registered in that part of His Majesty's dominions ²[or in that State, as the case may be.]

Savings and Repeal.

Savings for
prerogative.

79. Nothing in this Act shall take away, abridge or prejudicially affect the prerogative of the Crown in relation to the granting of any letters patent or to the withholding of a grant thereof.

80. [Repeal.] *Rep. by the Repealing Act, 1927 (XII of 1927), s. 2 and Sch.*

81. [Substitution of patents for rights under repealed Act.] *Rep. by the Repealing and Amending Act, 1920 (XXXI of 1920), s. 3 and Sch. II.*

¹ Subs. by the A. O. for "G. G. in C."

² Ins. by the Indian Patents and Designs (Amendment) Act, 1930 (7 of 1930), s. 32.

³ For such notifications, see Gen. R. and O., Vol. IV, pp. 117-119.

⁴ Subs. by the A. O. for "Gazette of India".

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THE SCHEDULE.

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THE INDIAN ARMY ACT, 1911.

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-

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(Chapter I.—Preliminary.)

ACT No. VIII OF 1911.¹

[16th March, 1911.]

An Act to consolidate and amend the law relating to the government of His Majesty's^{2*} Indian Forces.

WHEREAS it is expedient to consolidate and amend the law relating to the government of the ³[Indian commissioned officers, Viceroy's commissioned officers], soldiers and other persons in His Majesty's Indian Forces ; It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

Short title
and com-
mencement.

1. (1) This Act may be called the Indian Army Act, 1911.
(2) It shall come into force on such ⁴date as the ⁵[Central Government] may, by notification in the ⁶[Official Gazette], direct in this behalf.

Application of Act.

Persons
subject to
Act.

2. (1) The following persons shall be subject to this Act, namely :—

- (a) ³[Indian commissioned officers, Viceroy's commissioned officers]
and warrant officers :

[Provided that a person holding a commission in the Army in India Reserve of Officers shall be so subject only when ordered on any duty or service for which he is liable as a member of such reserve force :]

- (b) persons enrolled under this Act ;
- (c) persons not otherwise subject to military law, who, on active service, in camp, on the march, or at any frontier post specified by the ⁵[Central Government] by ⁸notification in this behalf, are employed by, or are in the service of, or are followers of, or accompany any portion of, His Majesty's Forces :

* * * * *

¹ For Statement of Objects and Reasons, see Gazette of India, 1910, Pt. V, p. 140; for Report of Select Committee, see *ibid.*, 1911, Pt. V, p. 39; and for Proceedings in Council, see *ibid.*, 1910, Pt. VI, p. 18, dated 13th August, 1910, and *ibid.*, 1911, Pt. VI, pp. 34, 46 and 362.

This Act has been declared to be in force in the Sonthal Parganas by Notification under the Sonthal Parganas Settlement Regulation (3 of 1872), s. 3; in British Baluchistan by the British Baluchistan Laws Regulations, 1913 (3 of 1913), s. 3; in the Khondmals District by the Khondmals Laws Regulation, 1936 (4 of 1936), s. 3 and Sch.; and in the Angul District by the Angul Laws Regulation, 1936 (5 of 1936), s. 3 and Sch.

² The word "Native" rep. by the Indian Army (Amendment) Act, 1918 (11 of 1918), s. 26 and Sch.

³ Subs. by the Indian Army (Amendment) Act, 1934 (33 of 1934), s. 2, for "Indian officers".

⁴ The 1st January, 1912, see Gen. R. & O., Vol. IV, p. 120.

⁵ Subs. by the A. O. for "G. G. in C."

* Subs. by the A. O. for "Gazette of India".

⁷ Ins. by the Indian Army (Amendment) Act, 1937 (15 of 1937), s. 2.

⁸ For places declared to be frontier posts under ss. 2(1) and 22, see Gen. R. & O., Vol. IV, p. 120.

⁹ Proviso rep. by Act 11 of 1918, s. 26 and Sch.

(Chapter I.—Preliminary.)

(2) Every person subject to this Act under sub-section (1), clause (a) or (b), shall remain so subject until duly ¹[retired, discharged, cashiered, removed, or dismissed from the service] :

²[Provided that an officer of the Indian Land Forces retired therefrom and appointed to the Indian Regular Reserve of Officers shall again become so subject when ordered on any duty or service for which he is liable as a member of such reserve force.]

3. (1) The ³[Central Government] may, by ⁴notification, direct that any persons or class of persons subject to this Act under section 2, sub-section (1), clause (c), shall be so subject as ⁵[Indian commissioned officers, Viceroy's commissioned officers], warrant officers or non-commissioned officers, and may authorize any officer to give a like direction with respect to any such person and to cancel such direction.

Special provision as to rank in certain cases.

(2) All persons subject to this Act other than officers, warrant officers and non-commissioned officers shall, if they are not persons in respect of whom a notification or direction under sub-section (1) is in force, be deemed to be of a rank inferior to that of a non-commissioned officer.

4. Every person subject to this Act under section 2, sub-section (1), clause (c), shall, for the purposes of this Act, be deemed to be under the commanding officer of the corps, department or detachment (if any) to which he is attached, and if he is not attached to any corps, department or detachment, under the command of any officer who may for the time being be named as his commanding officer by the officer commanding the force with which such person may for the time being be serving, or of any other prescribed officer, or, if no such officer is named or prescribed, under the command of the said officer commanding the force :

Commanding officer of persons subject to military law under section 2, clause (c).

Provided that an officer commanding a force shall not place a person under the command of an officer of official rank inferior to that of such person if there is present at the place where such person is any officer of higher rank under whose command he can be placed.

5. (1) The ³[Central Government] may, by notification, apply all or any of the provisions of this Act to any force raised and maintained in India under the authority of the ³[Central Government].

Powers to apply Act to certain forces under the Central Government.

(2) While any of the provisions of this Act apply to any such force, the ³[Central Government] may, by notification, direct by what authority any

¹ Subs. by the Indian Army (Amendment) Act, 1934 (33 of 1934), s. 3, for "discharged or dismissed".

² Ins. by the Indian Army (Amendment) Act, 1937 (15 of 1937), s. 2.

³ Subs. by the A. O. for "G. G. in C."

⁴ For notification declaring the rank of certain Civil officers when subject to the Act, see Gen. R. & O., Vol. IV, p. 121.

⁵ Subs. by Act 33 of 1934, s. 2, for "Indian officers".

(Chapter I.—Preliminary.)

jurisdiction, powers or duties incident to the operation of these provisions shall be exercised or performed in respect of that force.

Officers to exercise powers in certain cases.

6. ¹[(1) Whenever persons subject to this Act are serving—

- (a) out of India under an officer not subject to the authority of the ²[Central Government], or
- (b) in India under an officer commanding any military organization not in this section specifically named, and being, in the opinion of the ²[Central Government], not less than a brigade,

the ²[Central Government] may prescribe the officer by whom the powers which, under this Act, may be exercised by officers commanding armies, army corps, divisions and brigades, shall, as regards such persons, be exercised.]

(2) The ²[Central Government] may confer such powers either absolutely, or subject to such restrictions, reservations, exceptions and conditions as ³[it] may think fit.

Relations between Indian Forces and Burman Forces when acting together, etc.

⁴6A. [(1) When an officer, warrant officer or non-commissioned officer of His Majesty's Burma Forces is a member of a body of those forces acting with, or is attached to, any body of His Majesty's Indian Forces under such conditions as may be prescribed, then for the purposes of command and discipline and for the purposes of the provisions of this Act relating to superior officers he shall in relation to that body of His Majesty's Indian Forces be treated and have all such powers as if he were an officer, warrant officer or non-commissioned officer as the case may be of His Majesty's Indian Forces.

(2) When an officer, warrant officer, non-commissioned officer or soldier of His Majesty's Indian Forces is a member of a body of those forces acting with, or is attached to, any body of His Majesty's Burma Forces under such conditions as may be prescribed, then for the purposes of command and discipline and for the purposes of the provisions of this Act relating to superior officers the officers, warrant officers and non-commissioned officers of that body of His Majesty's Burma Forces shall in relation to him be treated and have all such powers as if they were officers, warrant officers or non-commissioned officers of His Majesty's Indian Forces.

(3) In this section "prescribed" means "prescribed by the Central Government and the Governor of Burma", and, for the purposes of this section, the relative rank of officers, warrant officers and non-commissioned officers of His Majesty's Indian Forces and His Majesty's Burma Forces may be determined by regulations made by the Central Government and the Governor of Burma.]

¹ Subs. by the Indian Army (Amendment) Act, 1918 (11 of 1918), s. 3, for original sub-section (1).

² Subs. by the A. O. for "G. G. in C.".

³ Subs. by the A. O. for "he".

⁴ Ins. by the A. O.

(Chapter I.—Preliminary.)

Definitions.

7. In this Act, unless there is something repugnant in the subject or Definitions context,—

¹[(1) “British officer” means a person holding His Majesty’s commission in His Majesty’s Land Forces or in the Royal Marines or in the Territorial Army, and includes, in relation to a person subject to this Act when serving under such conditions as may be prescribed, a person holding a commission in His Majesty’s Naval Forces or Royal Air Force :]

²[(2) “Indian commissioned officer” means a person commissioned, gazetted or in pay as an officer holding His Majesty’s commission in the Indian Land Forces, and includes, in relation to a person subject to this Act when serving under such conditions as may be prescribed, a person holding a commission in the Indian Air Force :

(2A) “Viceroy’s commissioned officer” means a person commissioned, gazetted or in pay as a Viceroy’s commissioned officer in the Indian Army :]

(3) “warrant officer” means a person appointed, gazetted or in pay as ³[an Indian] warrant officer in His Majesty’s Indian Forces :

(4) “non-commissioned officer” means a person attested under this Act holding ³[an Indian] non-commissioned rank in His Majesty’s Indian Forces, and includes an acting non-commissioned officer :

⁴[(5) “officer” means an officer of any of His Majesty’s Military Forces, and includes, in relation to a person subject to this Act when serving under such conditions as may be prescribed, an officer of any of His Majesty’s Naval or Air Forces, but does not include a warrant officer, petty officer or non-commissioned officer :]

(6) “commanding officer,” when used in any provision of this Act with reference to any separate portion of His Majesty’s forces or to any department, means the British officer ⁵[or Indian commissioned officer] whose duty it is under the regulations of the army, or, in the absence of any such regulation, by the custom of the service, to discharge with respect to that portion of the forces or that department the functions of commanding officer in regard to matters of the description referred to in that provision :

(7) “superior officer,” when used in relation to a person subject to this Act, includes a warrant officer and a non-commissioned officer ; and, as regards persons placed under his orders, ⁶[an officer, warrant officer, petty officer or non-commissioned officer of any of His Majesty’s Naval, Military or Air Forces] :

¹ Subs. by the Indian Army (Amendment) Act, 1934 (33 of 1934), s. 5, for original cl. (1).

² Subs. by s. 5, *ibid.*, for original cl. (2).

³ Subs. by the Indian Army (Amendment) Act, 1918 (11 of 1918), s. 2, for “a native”.

⁴ Subs. by Act 33 of 1934, s. 5, for original cl. (5).

⁵ Ins. by s. 5, *ibid.*

⁶ Subs. by s. 5, *ibid.*, for “a warrant officer or non-commissioned officer subject to the Army Act or the Air Force Act.”

(Chapter I.—Preliminary.)

¹[(8) "army," "army corps," "division," and "brigade" mean respectively an army, army corps, division or brigade which is under the command of an officer subject to the authority of the ²[Central Government] or, when on active service, an army, army corps, division or brigade under the command of an officer holding a commission in His Majesty's Land Forces ³[or His Majesty's Indian Forces] :]

(9) "corps" means any separate body of persons subject to this Act or the Army Act which is prescribed as a corps for the purposes of all or any of the provisions of this Act :

(10) "independent brigade" means a brigade which does not form part of a division :

(11) "department" includes any division or branch of a department :

(12) "enemy" includes all armed mutineers, armed rebels, armed rioters, pirates and any person in arms against whom it is the duty of a person subject to military law to act :

(13) "active service," as applied to a person subject to this Act, means the time during which such person is attached to, or forms part of, a force which is engaged in operations against an enemy, or is engaged in military operations in, or is on the line of march to, a country or place wholly or partly occupied by an enemy, or is in military occupation of any foreign country :

(14) "military custody" means the arrest or confinement of a person according to the usages of the service ³[and includes air force custody] :

(15) "military reward" includes any gratuity or annuity for long service or good conduct, any good conduct pay, good service pay or pension, and any other military pecuniary reward :

(16) "court-martial" means a court-martial held under this Act :

(17) "criminal court" means a court of ordinary criminal justice in British India, or established elsewhere by the authority of the ²[Central Government or the Crown Representative] :

(18) "civil offence" means an offence which, if committed in British India, would be triable by a criminal court :

(19) "offence" means any act or omission punishable under this Act, and includes a civil offence as hereinbefore defined :

(20) "notification" means a notification published in the ⁴[Official Gazette] :

(21) "prescribed" means prescribed by rules made under this Act : and

(22) all words and expressions used herein and defined in the Indian Penal Code and not hereinbefore defined shall be deemed to have the meanings respectively attributed to them by that Code.

¹ Subs. by the Indian Army (Amendment) Act, 1918 (11 of 1918), s. 4, for the original clause.

² Subs. by the A. O. for "G. G. in C."

³ Ins. by the Indian Army (Amendment) Act, 1934 (33 of 1934), s. 5.

⁴ Subs. by the A. O. for "Gazette of India".

(Chapter II.—Enrolment and Attestation.)

CHAPTER II.

ENROLMENT AND ATTESTATION.

Enrolment.

8. Upon the appearance before the prescribed enrolling officer of any person desirous of being enrolled, the enrolling officer shall read and explain to him, or cause to be read and explained to him in his presence, the conditions of the service for which he is to be enrolled; and shall put to him the question set forth in the prescribed form of enrolment, and shall, after having cautioned him that if he makes a false answer to any such question he will be liable to punishment under this Act, record or cause to be recorded his answer to each such question.

9. If, after complying with the provisions of section 8, the enrolling officer is satisfied that the person desirous of being enrolled fully understands the questions put to him and consents to the conditions of service, and if he perceives no impediment, he shall sign ¹[and shall also cause the person to sign] the enrolment paper, and the person shall then be deemed to be enrolled.

10. Every person who has for the space of six months been in the receipt of military pay ²[as an enrolled person] and been borne on the rolls of any corps or department ³* * * shall be deemed to have been duly enrolled, and shall not be entitled to claim his discharge on the ground of illegality or irregularity in his enrolment.

Attestation.

11. The following persons shall be attested, namely :—

- (a) all persons enrolled as combatants;
- (b) all other enrolled persons prescribed by the ⁴[Central Government].

Persons to
be attested.

12. (1) When a person who is to be attested is reported fit for duty, or has completed the prescribed period of probation, an oath or affirmation shall be administered to him in the prescribed form by his commanding officer in front of his corps or such portion thereof or such members of his department as may be present or by any other prescribed person.

(2) The form of oath or affirmation prescribed under this section shall contain a promise that the person to be attested will be faithful to His Majesty, His heirs and successors, and that he will serve in His Majesty's Indian Forces and go wherever he is ordered by land or sea, and that he will obey all commands of any officer set over him, even to the peril of his life.

¹ Ins. by the Indian Army (Amendment) Act, 1918 (11 of 1918), s. 5.

² Ins. by the Indian Army (Amendment) Act, 1934 (33 of 1934), s. 6.

³ The words "(of which the last-pay statement, if produced, shall be evidence)" rep. by Act 11 of 1918, s. 26 and Sch.

⁴ Subs. by the A. O. for "G. G. in C."

(Chapter II.—Enrolment and Attestation. Chapter III.—Dismissal and Discharge.)

(3) The fact of an enrolled person having taken the oath or affirmation directed by this section to be taken shall be entered on his enrolment paper, and authenticated by the signature of the officer administering the oath or affirmation.

CHAPTER III.

DISMISSAL AND DISCHARGE.

- Dismissal by Central Government and Commander-in-Chief in India. Dismissal by officer commanding army, division, brigade, etc.
- 13.** ¹[(1)] The ²[Central Government] ^{3*} * * * may dismiss from the service any person subject to this Act.
- ⁴[(2) The Commander-in-Chief in India may dismiss from the service any person subject to this Act other than an Indian commissioned officer.]
- 14.** An officer commanding an army, ⁵[army corps], division or brigade, or any prescribed officer, may dismiss from the service any person serving under his command other than an ^{6*} officer.
- 15.** [Dismissal of convicts.] Rep. by the Indian Army (Amendment) Act, 1918 (XI of 1918), s. 26 and Sch.
- Discharge.
- 16.** The prescribed authority may, in conformity with any rules prescribed in this behalf, discharge from the service any person subject to this Act.
- Certificate to person dismissed or discharged.
- 17.** Every enrolled person who is dismissed or discharged from the service shall be furnished by his commanding officer with a certificate, in the English language and in the mother tongue of such person (when his mother tongue is not English), setting forth—
- (a) the authority dismissing or discharging him ;
- (b) the cause of his dismissal or discharge ;
- (c) the full period of his service in the army.
- Discharge, etc., out of India.
- 18.** (1) Any person enrolled under this Act who is entitled under the conditions of his enrolment to be discharged, or whose discharge is ordered by competent authority, and who, when he is so entitled or ordered to be discharged, is serving out of India, and requests to be sent to India, shall, before being discharged, be sent to India with all convenient speed.

¹ The original s. 13 was re-numbered as sub-section (1) of that section by the Indian Army (Amendment) Act, 1934 (33 of 1934), s. 7.

² Subs. by the A. O. for "G. G. in C."

³ The words "or the Commander-in-Chief in India" rep. by Act 33 of 1934, s. 7.

⁴ Ins. by s. 7, *ibid.*

⁵ Ins. by the Indian Army (Amendment) Act, 1918 (11 of 1918), s. 6.

⁶ The word "Indian" rep. by Act 33 of 1934, s. 8. The words "an Indian" had been subs. for the words "a Native" by Act 11 of 1918, s. 2.

(Chapter III.—Dismissal and Discharge. Chapter IV.—Summary Reduction and Punishments otherwise than by order of Court-martial.)

(2) Any person enrolled under this Act who is dismissed from the service and who, when he is so dismissed, is serving out of India, shall be sent to India with all convenient speed :

¹[Provided that, where any such person is sentenced to dismissal combined with any other punishment, such other punishment, or in the case of a sentence of transportation or imprisonment, a portion of such other punishment, may be inflicted before he is sent to India.]

* * * * *

CHAPTER IV.

SUMMARY REDUCTION AND PUNISHMENTS OTHERWISE THAN BY ORDER OF COURT-MARTIAL.

19. (1) The Commander-in-Chief in India, an officer commanding an army, ³[army corps], division or brigade, or any prescribed officer, may reduce to a lower grade or to the ranks ⁴[any warrant officer or] any non-commissioned officer under his command :

Reduction of
warrant
officers and
non-com-
missioned
officers.

⁴[Provided that a warrant officer reduced to the ranks shall not be required to serve in the ranks as a sepoy.]

(2) The commanding officer of an acting non-commissioned officer may order him to revert to his permanent grade as a non-commissioned officer or, if he has no permanent grade above the ranks, to the ranks.

20. (1) The Commander-in-Chief in India may, subject to the control of the ⁵[Central Government], specify the minor punishments to which persons subject to this Act shall be liable without the intervention of a court-martial, and the officer or officers by whom, and the extent to which, such minor punishments may be awarded.

Minor
punish-
ments.

(2) ⁶[Imprisonment in military custody and, in the case of persons subject to this Act on active service, any prescribed field punishment may be specified as minor punishments], provided that—

(a) the term of such imprisonment ⁷[or field punishment] shall not exceed twenty-eight days ; and

(b) it shall not be awarded to any person of or above the rank of non-commissioned officer, or who, when he committed the offence in respect of which it is awarded, was of or above such rank.

¹ Ins. by the Indian Army (Amendment) Act, 1918 (11 of 1918), s. 7.

² Sub-section (3) rep. by s. 26 and Sch., *ibid.*

³ Ins. by s. 6, *ibid.*

⁴ Ins. by the Indian Army (Amendment) Act, 1934 (33 of 1934), s. 9.

⁵ Subs. by the A. O. for "G. G. in C."

⁶ Subs. by the Indian Army (Amendment) Act, 1920 (37 of 1920), s. 2, for "Imprisonment in military custody may be specified as such a minor punishment".

⁷ Ins. by s. 2, *ibid.*

(Chapter IV.—Summary Reduction and Punishments otherwise than by order of Court-martial.)

Collective
fines.

21. Whenever any weapon or part of a weapon forming part of the equipment of a half squadron, battery, company or other similar unit is lost or stolen, the officer commanding the army, ¹[army corps], division or independent brigade to which such unit belongs may, after obtaining the report of a court of inquiry, impose a collective fine upon the ²[Viceroy's commissioned officers, warrant officers,] non-commissioned officers and men of such unit, or upon so many of them as, in his judgment, should be held responsible for such loss or theft.

Punishment
of certain
Indian
followers.

22. (1) For any offence, in breach of good order, the commanding officer of any corps or detachment on active service, in camp, on the march, or at any frontier post specified by the ³[Central Government] by notification in this behalf at which troops are stationed, may punish any ⁴[Indian] follower of such corps or detachment who is subject to this Act under section 2, subsection (1), clause (c)—

(a) if such follower is not a menial servant, with imprisonment for a term which may extend to thirty days, or with fine which may extend to fifty rupees :

(b) if such follower is a menial servant, with imprisonment for a term which may extend to seven days, or, if on active service, with corporal punishment not exceeding twelve strokes of a rattan.

(2) Imprisonment awarded under this section may be carried out in a military guard, or in a jail, as ordered by the said commanding officer ; and the officer in charge of any jail shall, on the delivery to him of the person of the offender, with a warrant, under the hand of the said commanding officer, detain the offender according to the exigency of the warrant or until he is discharged by due course of law.

Provost Marshals.

Appoint-
ment.

23. For the prompt and instant repression of irregularities and offences committed in the field or on the march, provost-marshals may be appointed by the Commander-in-Chief in India or an officer commanding an army, ⁵[army corps], division or independent brigade or an officer commanding the forces in the field ; and the powers and duties of such provost-marshals shall be regulated according to the established custom of war and the rules of the service.

Duties and
powers.

24. (1) The duties of a provost-marshal so appointed are to take charge of prisoners confined for offences of a general description, to preserve good

¹ Ins. by the Indian Army (Amendment) Act, 1918 (11 of 1918), s. 6.

² Subs. by the Indian Army (Amendment) Act, 1934 (33 of 1934), s. 10, for " Indian officers ". The word " Indian " was substituted for " Native " by Act 11 of 1918, s. 2.

³ Subs. by the A. O. for " G. G. in C. "

⁴ Subs. by Act 11 of 1918, s. 2, for " Native ".

⁵ Ins. by s. 6, *ibid.*

(Chapter IV.—*Summary Reduction and Punishments otherwise than by order of Court-martial.* Chapter V.—*Offences.*)

order and discipline, and to prevent breaches of the same by persons belonging or attached to the army. ¹[He may at any time arrest and detain for trial any person subject to this Act who commits an offence and may also carry into effect any punishments to be inflicted in pursuance of the sentence of a court-martial.]

²[(2) A provost-marshal may punish with any punishment mentioned in section 22, sub-section (1), clause (b), any follower who is subject to this Act under section 2, sub-section (1), clause (c), and is a menial servant and who, on active service and in his view, or in the view of any of his assistants, commits any breach of good order and military discipline.]

CHAPTER V.

OFFENCES.

Offences in respect of Military Service.

25. Any person subject to this Act who commits any of the following offences, that is to say,—

Offences
punishable
with death.

- (a) shamefully abandons or delivers up any garrison, fortress, post or guard committed to his charge, or which it is his duty to defend ; or
- (b) in presence of an enemy, shamefully casts away his arms or ammunition, or intentionally uses words or any other means to induce any person subject to military law to abstain from acting against the enemy, or to discourage such person from acting against the enemy, or misbehaves in such manner as to show cowardice ; or
- (c) directly or indirectly holds correspondence with, or communicates intelligence to, the enemy, or any person in arms against the State, or who, coming to the knowledge of any such correspondence or communication, omits to discover it immediately to his commanding or other superior officer ; or
- (d) treacherously makes known the watchword to any person not entitled to receive it ; or
- (e) directly or indirectly assists or relieves with money, victuals or ammunition, or knowingly harbours or protects, any enemy or person in arms against the State ; or

¹ Ins. by the Indian Army (Amendment) Act, 1920 (37 of 1920), s. 3.

² Subs. by s. 3, *ibid.*, for the original sub-sections (2) and (3).

(Chapter V.—Offences.)

- (f) in time of war, or during any military operation, intentionally occasions a false alarm in action, camp, garrison or quarters, or spreads reports calculated to create alarm or despondency ; or
- (g) being a sentry in time of war or alarm, or over any State prisoner, treasure, magazine or dockyard, sleeps upon his post, or quits it without being regularly relieved or without leave ; or
- (h) in time of action, leaves his commanding officer or his post or party to go in search of plunder ; or
- (i) in time of war, quits his guard, picquet, party or patrol without being regularly relieved or without leave ; or
- (j) in time of war or during any military operation, uses criminal force to, or commits an assault on, any person bringing provisions or other necessities to the camp or quarters of any of His Majesty's forces, or forces a safeguard, or breaks into any house or any other place for plunder, or plunders, injures or destroys any field, garden or other property of any kind ;¹[or
- (k) on active service commits any offence against the property or person of any inhabitant of, or resident in, the country in which he is serving ;]

shall, on conviction by court-martial, be punished with death, or with such less punishment as is in this Act mentioned.

Offences not punishable with death.

26. Any person subject to this Act who commits any of the following offences, that is to say,—

- (a) strikes, or forces or attempts to force, any sentry ; or
- (b) in time of peace, intentionally occasions a false alarm in camp, garrison or cantonment ; or
- (c) being a sentry, or on guard, plunders or wilfully destroys or injures any property placed under his charge or under charge of his guard ; or
- (d) being a sentry, in time of peace, sleeps upon his post, or quits it without being regularly relieved or without leave ;

shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned.

Mutiny and Insubordination.

Offences punishable with death.

27. Any person subject to this Act who commits any of the following offences, that is to say,—

- (a) begins, excites, causes²[or conspires with any other persons to cause,] or joins in any mutiny ; or

¹ Ins. by the Indian Army (Amendment) Act, 1918 (11 of 1918), s. 8.

² Ins. by s. 9, *ibid.*

(Chapter V.—Offences.)

- (b) being present at any mutiny, does not use his utmost endeavours to suppress the same ; or
- (c) knowing or having reason to believe in the existence of any mutiny, or of any intention to mutiny, or of any conspiracy against the State, does not, without delay, give information thereof to his commanding or other superior officer ; or
- (d) uses or attempts to use criminal force to, or commits an assault on, his superior officer, whether on or off duty, knowing or having reason to believe him to be such ; or
- (e) disobeys the lawful command of his superior officer ;

shall, on conviction by court-martial, be punished with death, or with such less punishment as is in this Act mentioned.

28. Any person subject to this Act who commits any of the following offences, that is to say—

Offences not punishable with death.

- (a) is grossly insubordinate or insolent to his superior officer in the execution of his office ; or
- (b) refuses to superintend or assist in the making of any field-work or other military work of any description ordered to be made either in quarters or in the field ; or
- (c) impedes a provost-marshal or an assistant provost-marshal, or any officer or non-commissioned officer or other person legally exercising authority under or on behalf of a provost-marshal, or, when called on, refuses to assist, in the execution of his duty, the provost-marshal, assistant provost-marshal, or any such officer, non-commissioned officer or other person ;

shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned.

Desertion, Fraudulent Enrolment and Absence without Leave.

29. Any person subject to this Act who deserts or attempts to desert the service shall, on conviction by court-martial, be punished with death, or with such less punishment as is in this Act mentioned.

30. Any person subject to this Act who commits any of the following offences, that is to say,—

Harbouring deserter, absence without leave, etc.

- (a) knowingly harbours any deserter, or who, knowing, or having reason to believe, that any other person has deserted, or that any deserter has been harboured by any other person, does not without delay give information thereof to his own or some other superior officer, or use his utmost endeavours to cause such deserter to be apprehended ; or
 - (b) knowing, or having reason to believe, that a person is a deserter, procures or attempts to procure the enrolment of such person ;
- or

(Chapter V.—Offences.)

- (c) without having first obtained a regular discharge from the corps or department to which he belongs, enrolls himself in the same or any other corps or department ; or
- (d) absents himself without leave or without sufficient cause overstays leave granted to him ; or
- (e) being on leave of absence and having received information from proper authority that any corps or portion of a corps, or any department, to which he belongs, has been ordered on active service, fails, without sufficient cause, to rejoin without delay ; or
- (f) without sufficient cause fails to appear at the time fixed at the parade or place appointed for exercise or duty ; or
- (g) when on parade, or on the line of march, without sufficient cause or without leave from his superior officer quits the parade or line of march ; or
- (h) in time of peace, quits his guard, picquet or patrol without being regularly relieved or without leave ; or
- (i) without proper authority is found two miles or upwards from camp ; or
- (j) without proper authority is absent from his cantonment or lines after tattoo, or from camp after retreat-beating ;

shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned.

Disgraceful Conduct.

Disgraceful
conduct.

31. Any person subject to this Act who commits any of the following offences, that is to say,—

- (a) dishonestly misappropriates or converts to his own use any money, provisions, forage, arms, clothing, ammunition, tools, instruments, equipments or military stores of any kind, the property of ¹[the Crown], entrusted to him ; or
- (b) dishonestly receives or retains any property in respect of which an offence under clause (a) has been committed, knowing or having reason to believe the same to have been dishonestly misappropriated or converted ; or
- (c) wilfully destroys or injures any property of ¹[the Crown] entrusted to him ; or
- (d) commits theft in respect of any property of ¹[the Crown], or of any military mess, band or institution, or of any person subject to military law, or serving with, or attached to, the army ; or

¹ Subs. by the A. O. for "Govt."

(Chapter V.—Offences.)

- (e) dishonestly receives or retains any such property as is specified in clause (d) knowing or having reason to believe it to be stolen ;
or
- (f) does any other thing with intent to defraud, or to cause wrongful gain to one person or wrongful loss to another person ; or
- (g) malingers or feigns or produces disease or infirmity in himself, or intentionally delays his cure or aggravates his disease or infirmity ; or
- (h) with intent to render himself or any other person unfit for service, voluntarily causes hurt to himself or any other person ;
or
- (i) commits any offence of a cruel, indecent or unnatural kind, or attempts to commit any such offence and does any act towards its commission ;

shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned.

Intoxication.

32. Any person subject to this Act who is in a state of intoxication, whether on duty or not on duty, shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned. **Intoxication.**

Offences in relation to Persons in Custody.

33. Any person subject to this Act who, without proper authority, releases any State prisoner, enemy or person taken in arms against the State, placed under his charge, or who negligently suffers any such prisoner, enemy or person to escape, shall, on conviction by court-martial, be punished with death, or with such less punishment as is in this Act mentioned. **Offences punishable with death.**

34. Any person subject to this Act who commits any of the following offences, that is to say,— **Offences not punishable with death.**

- (a) being in command of a guard, picquet or patrol, refuses to receive any prisoner or person duly committed to his charge ; or
- (b) without proper authority releases any prisoner or person placed under his charge, or negligently suffers any such prisoner or person to escape ; or
- (c) being in military custody, leaves such custody before he is set at liberty by proper authority ;

shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned.

*(Chapter V.—Offences.)**Offences in relation to Property.*

Offences in
relation to
property.

35. Any person subject to this Act who commits any of the following offences, that is to say,—

- (a) commits extortion, or without proper authority exacts from any person carriage, portorage or provisions ; or
- (b) in time of peace, commits house-breaking for the purpose of plundering, or plunders, destroys or damages any field, garden or other property ; or
- (c) designedly or through neglect kills, injures, makes away with, ill-treats or loses his horse or any animal used in the public service ; or
- (d) makes away with, or is concerned in making away with, his arms, ammunition, equipments, instruments, tools, clothing or regimental necessities ; or
- (e) loses by neglect anything mentioned in clause (d) ; or
- (f) wilfully injures anything mentioned in clause (d) or any property belonging to ¹[the Crown], or to any military mess, band or institution, or to any person subject to military law, or serving with, or attached to, the army ; or
- (g) sells, pawns, destroys or defaces any medal or decoration granted to him ;

shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned.

Offences in relation to False Documents and Statements.

False
accusations
and offences
in relation to
documents.

36. Any person subject to this Act who commits any of the following offences, that is to say,—

- (a) makes a false accusation against any person subject to military law, knowing such accusation to be false ; or
- (b) in making any complaint under section 117 ²[or section 117A], knowingly makes any false statement affecting the character of any person subject to military law, or knowingly and wilfully suppresses any material fact ; or
- (c) obtains or attempts to obtain for himself, or for any other person, any pension, allowance or other advantage or privilege by a statement which is false, and which he either knows or believes to be false or does not believe to be true, or by making or using a false entry in any book or record, or by making

¹ Subs. by the A. O. for "Govt."

² Ins. by the Indian Army (Amendment) Act, 1934 (33 of 1934), s. 11.

(Chapter V.—Offences.)

any document containing a false statement, or by omitting to make a true entry or document containing a true statement ;
or

- (d) knowingly furnishes a false return or report of the number or state of any men under his command or charge, or of any money, arms, ammunition, clothing, equipments, stores or other property in his charge, whether belonging to such men or to ¹[the Crown] or to any person in or attached to the army, or who, through design or culpable neglect, omits or refuses to make or send any return or report of the matters aforesaid ;

shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned.

37. Any person having become subject to this Act who is discovered to have made a wilfully false answer to any question set forth in the prescribed form of enrolment which has been put to him by the enrolling officer before whom he appears for the purpose of being enrolled, shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned.

False answers or enrolment.

Offences in relation to Courts-martial.

38. Any person subject to this Act who commits any of the following offences, that is to say,—

Offences in relation to courts-martial.

- (a) when duly summoned to attend as a witness before a court-martial, intentionally omits to attend, or refuses to be sworn or affirmed or to answer any question, or to produce or deliver up any book, document or other thing which he may have been duly warned and called upon to produce or deliver up ;
or
- (b) intentionally offers any insult or causes any interruption or disturbance to, or uses any menacing or disrespectful word, sign or gesture, or is insubordinate or violent in the presence of, a court-martial while sitting ; or
- (c) having been duly sworn or affirmed before any court-martial or other military court competent to administer an oath or affirmation, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true ;

shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned.

¹ Subs. by the A. O. for " Govt."

(Chapter V.—Offences.)

Miscellaneous Military Offences.

Miscellaneous military offences.

39. Any person subject to this Act who commits any of the following offences, that is to say,—

- (a) being an officer or warrant officer, behaves in a manner unbecoming his position and character ; or
- (b) strikes or otherwise ill-treats any person subject to this Act being his subordinate in rank or position ; or
- (c) being in command at any post or on the march, and receiving a complaint that any one under his command has beaten or otherwise maltreated or oppressed any person, or has disturbed any fair or market, or committed any riot or trespass, fails to have due reparation made to the injured person or to report the case to the proper authority ; or
- (d) by defiling any place of worship, or otherwise, intentionally insults the religion or wounds the religious feelings of any person ; or
- (e) attempts to commit suicide and does any act towards the commission of such offence ; or
- (f) being below the rank of warrant officer, when off duty, appears, without proper authority, in or about camp or cantonments, or in or about, or when going to or returning from, any town or bázár, carrying a sword, bludgeon or other offensive weapon ; or
- (g) directly or indirectly accepts or obtains, or agrees to accept or attempts to obtain, for himself or for any other person, any gratification as a motive or reward for procuring the enrolment of any person, or leave of absence, promotion or any other advantage or indulgence for any person in the service ; or
- (h) neglects to obey any general or garrison or other orders ; or
- (i) is guilty of any act or omission which, though not specified in this Act, is prejudicial to good order and military discipline ;

shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned.

Attempts.

¹[39A. Whoever attempts to commit an offence punishable by this Act or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence may, where no express provision is made by this Act for the punishment of such attempt, be punished with the punishment provided in this Act for such offence.]

¹ Ins. by the Indian Army (Amendment) Act, 1918 (11 of 1918), s. 10.

(Chapter V.—Offences.)

Abetment.

40. Every person subject to this Act who abets any offence punishable under this Act may be punished with the punishment provided in this Act for such offence. Abetment.

Civil Offences.

41. ¹[(1)] Every person subject to this Act who ²[either within British India or] at any place beyond British India, ³* * * commits any civil offence shall be deemed to be guilty of an offence against military law, and, if charged therewith under this section, shall, subject to the provisions of this Act, be liable to be tried for the same by court-martial, and on conviction to be punished as follows, that is to say :—

- (a) if the offence is one which would be punishable under the law of British India with death or with transportation, he shall be liable to suffer any punishment ⁴[other than whipping] assigned for the offence by the law of British India ; and
- (b) in other cases he shall be liable to suffer any punishment ⁴[other than whipping] assigned for the offence by the law of British India, or such punishment as might be awarded to him in pursuance of this Act in respect of an act prejudicial to good order and military discipline :

²[Provided that a person subject to this Act who at any place within British India or at any place, other than such frontier posts as may be specified by the ⁵[Central Government] by notification in this behalf, ⁶[in which the Central Government or the Crown Representative exercises jurisdiction by virtue of the Government of India Act, 1935, or of any Order in Council made under the Foreign Jurisdiction Act, 1890,] and while not on active service, commits the offence of murder or culpable homicide not amounting to murder in relation to a person not subject to military law or the offence of rape, shall not be deemed to be guilty of an offence against military law and shall not be tried by a court-martial.

(2) The powers of a court-martial to try and to punish any person under this section shall not be affected by reason of the fact that the civil offence with which such person is charged is also a military offence.]

42. [Certain civil offences triable by military law.] Rep. by the Indian Army (Amendment) Act, 1934 (XXXIII of 1934), s. 13.

¹ The original s. 41 was re-numbered as sub-section (1) of that section by the Indian Army (Amendment) Act, 1934 (33 of 1934), s. 12.

² Ins. by s. 12, *ibid.*

³ The words "or when on active service in British India" rep. by s. 12, *ibid.*

⁴ Ins. by the Indian Army (Amendment) Act, 1920 (37 of 1920), s. 4.

⁵ Subs. by the A. O. for "G. G. in C."

⁶ Subs. by the A. O. for "in which the G. G. in C. exercises jurisdiction by virtue of the Indian (Foreign Jurisdiction) Order in Council, 1902".

(Chapter VI.—Punishments.)

CHAPTER VI.

PUNISHMENTS.

Punish-
ments.

43. Punishments may be inflicted in respect of offences committed by persons subject to this Act, and convicted by court-martial, according to the scale following, that is to say :—

- (a) death ;
- (b) transportation for life or for any period not less than seven years ;
- (c) imprisonment ¹[either rigorous or simple] for any term not exceeding fourteen years ;
- ²[(cc) in the case of Indian commissioned officers, cashiering ;]
- (d) dismissal from the service ;

3* * * * * * *

- ⁴[(f) reduction, in the case of a warrant officer, to a lower grade or class or place in the list of his rank, or to the ranks ; or in the case of a non-commissioned officer, to a lower grade or a lower rank or to the ranks :

Provided that a warrant officer reduced to the ranks shall not be required to serve in the ranks as a sepoy ;]

- (g) in the case of officers, warrant officers and non-commissioned officers, forfeiture ⁵[in the prescribed manner of seniority of rank and service for the purpose of promotion ;]

- ⁶[(gg) in the case of officers, ⁷[warrant officers and non-commissioned officers,] reprimand or severe reprimand ;]

- (h) forfeitures and stoppages as follows, namely :—

- (i) forfeiture of service for the purpose of ⁸* increased pay, pension or any other prescribed purpose ;

9* * * * * *

- (iii) forfeiture, in the case of a person sentenced to ⁷[cashiering or] dismissal from the service ¹⁰* * *, of all arrears of pay and allowances and other public money due to him at the time of such ⁷[cashiering or] dismissal.

¹ Subs. by the Indian Army (Amendment) Act, 1918 (11 of 1918), s. 11(I), for “(with or without solitary confinement) ”.

² Cl. (cc) ins. by the Indian Army (Amendment) Act, 1934 (33 of 1934), s. 14.

³ Cl. (e) rep. by s. 14, *ibid.*

⁴ Subs. by s. 14, *ibid.*, for the original clause.

⁵ Subs. by s. 14, *ibid.*, for “ of seniority of rank ”.

⁶ Cl. (gg) ins. by Act 11 of 1918, s. 11(3).

⁷ Ins. by Act 33 of 1934, s. 14.

⁸ The word “ promotion ” rep. by s. 14, *ibid.*

⁹ Sub-clause (ii) rep. by s. 14, *ibid.*

¹⁰ The words “ or whose sentence involves such dismissal ” rep. by Act 11 of 1918, s. 26 and Sch.

(Chapter VI.—Punishments.)

- (iv) stoppages of pay and allowances until any proved loss or damage occasioned by the offence of which he is convicted is made good ;

¹ [(v) on active service forfeiture of pay and allowances for a period not exceeding three months.]

44. Where in respect of any offence under this Act there is specified a particular punishment or such less punishment as is in this Act mentioned, there may be awarded in respect of that offence instead of such particular punishment (but subject to the other provisions of this Act as to punishments and regard being had to the nature and degree of the offence) any one punishment lower in the above scale than the particular punishment.

²45. Where any person, subject to this Act and under the rank of war-rant officer, on active service is guilty of any offence, it shall be lawful for a court-martial to award for that offence any such punishment, other than flogging, as may be prescribed as a field punishment. Field punishment shall be of the character of personal restraint or of hard labour but shall not be of a nature to cause injury to life or limb.]

46. ³[Field punishment] shall, for the purpose of commutation, be deemed to stand in the scale of punishments next below dismissal.

47. A sentence of a court-martial may award, in addition to or without any one other punishment, ⁴[the punishment specified in clause (cc) or clause (d) and any one or more of the punishments specified in clauses (f), (g), (gg) and (h) of section 43].

⁵[47A. Whenever an Indian commissioned officer is sentenced to transportation or imprisonment, the court shall by its sentence sentence such officer to be cashiered.]

48. Whenever any person is sentenced to rigorous imprisonment, the court may, by its sentence, order that the offender shall be kept in solitary confinement for any portion or portions of the imprisonment to which he is sentenced, not exceeding three months in the whole, according to the following scale, that is to say,—

- (a) a time not exceeding one month if the term of imprisonment does not exceed six months ;
- (b) a time not exceeding two months if the term of imprisonment exceeds six months and does not exceed one year ;
- (c) a time not exceeding three months if the term of imprisonment exceeds one year.

¹ Ins. by the Indian Army (Amendment) Act, 1918 (11 of 1918), s. 11 (4).

² Subs. by the Indian Army (Amendment) Act, 1920 (37 of 1920), s. 5, for the original s. 45.

³ Subs. by s. 6, *ibid.*, for "corporal punishment".

⁴ Subs. by the Indian Army (Amendment) Act, 1934 (33 of 1934), s. 15, for "any one or more of the punishments specified in clauses (d), (f), (gg) and (h) of s. 43".

⁵ Ins. by s. 16, *ibid.*

(Chapter VI—Punishments. Chapter VII.—Penal Deductions.)

Reduction of
non-commissioned
officers to ranks.

Retention in
the ranks of
a person
convicted on
active
service.

49. ¹[A warrant officer or a non-commissioned officer] sentenced by court-martial to transportation, imprisonment, ²[field punishment] or dismissal from the service, shall be deemed to be reduced to the ranks.

³[49A. When ⁴[any enrolled person] on active service has been sentenced by court-martial to dismissal or to transportation or imprisonment, whether combined with dismissal or not, the prescribed officer may direct that such person may be retained to serve in the ranks, and where such person has been sentenced to transportation or imprisonment, such service shall be reckoned as part of his term of transportation or imprisonment.]

CHAPTER VII.

PENAL DEDUCTIONS.

Deductions
from pay
and allow-
ances.

50. ⁵[(I) The following penal deductions may be made from the pay and allowances of an Indian commissioned officer, that is to say,—

- (a) all pay and allowances for every day of absence without leave, unless a satisfactory explanation has been given through his Commanding Officer and has been approved by the ⁶[Central Government];
- (b) any sum required to make good such compensation for any expenses, loss, damage or destruction occasioned by the commission of any offence as may be determined by the court-martial by whom he is convicted of such offence;
- (c) any sum required to make good the pay of any person subject to this Act which he has unlawfully retained or unlawfully refused to pay;
- (d) any sum required to make good any loss, damage or destruction of public or regimental property which after due investigation appears to the ⁶[Central Government] to have been occasioned by any wrongful act or negligence on the part of the Indian commissioned officer;
- (e) any sum ordered by a court-martial to be stopped under section 43.]

¹ Subs. by the Indian Army (Amendment) Act, 1934 (33 of 1934), s. 17, for "A non-commissioned officer".

² Subs. by the Indian Army (Amendment) Act, 1920 (37 of 1920), s. 6, for "corporal punishment".

³ Ins. by the Indian Army (Amendment) Act, 1918 (11 of 1918), s. 13.

⁴ Subs. by Act 33 of 1934, s. 18, for "any person".

⁵ Ins. by s. 19, *ibid.*

⁶ Subs. by the A. O. for "G. G. in C.".

(Chapter VII.—Penal Deductions.)

¹[(2)] The following penal deductions may be made from the pay and allowances of a person subject to this Act ²[other than an Indian commissioned officer], that is to say,—

- (a) all pay and allowances for every day of absence either on desertion or without leave, or as a prisoner of war, and for every day of imprisonment awarded by a criminal court, a court-martial, or an officer exercising authority under section 20 ³[or of field punishment awarded by a court-martial or such officer];
- (b) all pay and allowances for every day whilst he is in custody on a charge for an offence of which he is afterwards convicted by a criminal court or court-martial, or on a charge of absence without leave for which he is afterwards awarded imprisonment ³[or field punishment] by an officer exercising authority under section 20;
- (c) all pay and allowances for every day on which he is in hospital on account of sickness certified by the ⁴* medical officer attending on him ⁵* * to have been caused by an offence under this Act committed by him;
- ⁶[(cc) for every day on which he is in hospital on account of sickness certified by the medical officer attending on him to have been caused by his own misconduct or imprudence, such sum as may be specified by order of the Commander-in-Chief in India;]
- ⁷[(d) all pay and allowances ordered by a court-martial under section 43, or by an officer exercising authority under section 20, to be forfeited;]
- (e) any sum ordered by a court-martial to be stopped under section 43;
- (f) any sum required to make good such compensation for any expenses caused by him, or for any loss of or damage or destruction done by him to any arms, ammunition, equipment, clothing, instruments, regimental necessaries or military decoration, or to any buildings or property, as may be awarded by his commanding officer;

¹ The original s. 50 was re-numbered as sub-section (2) of that section by the Indian Army (Amendment) Act, 1934 (33 of 1934), s. 19.

² Ins. by s. 19, *ibid.*

³ Ins. by the Indian Army (Amendment) Act, 1920 (37 of 1920), s. 7.

⁴ The word "proper" rep. by the Indian Army (Amendment) Act, 1918 (11 of 1918), s. 26 and Sch.

⁵ The words "at the hospital" rep. by s. 26 and Sch., *ibid.*

⁶ Ins. by s. 14, *ibid.*

⁷ Subs. by the Indian Army (Amendment) Act, 1935 (7 of 1935), s. 2, for the original clause.

(Chapter VII—Penal Deductions.)

- (g) any sum required to pay a fine awarded by a criminal court, a court-martial exercising jurisdiction under section 41 ^{1*} *, or an officer exercising authority under section 20 or section 21 :

Provided that the total deductions from the pay and allowances of a person subject to this Act ²[other than an Indian commissioned officer] made under clauses (e) to (g), both inclusive, shall not (except in the case of a person sentenced to dismissal ^{3*} * * *) exceed in any one month one-half of his pay and allowances for that month.

Explanation.—For the purposes of clauses (a) and (b)—

- (i) absence or custody for six consecutive hours or upwards, whether wholly in one day or partly in one day and partly in another, may be reckoned as absence or custody for a day ;
- (ii) absence or custody for twelve consecutive hours or upwards may be reckoned as absence or custody for the whole of each day during any portion of which the person was absent or in custody ; and
- (iii) any absence or custody for less than a day may be reckoned as absence or custody for a day if such absence or custody prevented the absentee from fulfilling any military duty which was thereby thrown upon some other person.

Deductions from public money other than pay.

51. Any sum authorized by this Act to be deducted from the pay and allowances of any person may, without prejudice to any other mode of recovering the same, be deducted from any public money due to him other than a pension.

Remission of deductions.

52. Any deduction from pay and allowances authorized by this Act may be remitted in such manner ⁴[and to such extent] and by such authority as may from time to time be prescribed.

Provision for dependants of prisoners of war.

⁵[52A. (1) In the case of all persons subject to this Act, being prisoners of war, whose pay and allowances have been forfeited under section 50, but in respect of whom a remission has been made under section 52, it shall be lawful, notwithstanding any provision in any enactment or any rule of law to the contrary, for proper provision to be made by the prescribed authorities out of such pay and allowances for any dependants of such persons, and any such remission shall in that case be deemed to apply only to the balance thereafter remaining of such pay and allowances.

(2) Any payments hitherto made to dependants by way of deductions from pay and allowances which, if this section had been in force, could have been validly made are hereby validated.]

¹ The words and figures "or section 42" rep. by the Indian Army (Amendment) Act 1935 (7 of 1935), s. 2.

² Ins. by the Indian Army (Amendment) Act, 1934 (33 of 1934), s. 19.

³ The words "or whose sentence involves dismissal" rep. by the Indian Army (Amendment) Act, 1918 (11 of 1918), s. 26 and Sch.

⁴ Ins. by the Indian Army (Amendment) Act, 1917 (10 of 1917), s. 2.

⁵ Ins. by s. 3, *ibid.*

(Chapter VIII.—Courts-martial.)

CHAPTER VIII.

COURTS-MARTIAL.

Constitution and Dissolution of Courts-martial.

53. For the purposes of this Act there shall be four kinds of courts-martial, that is to say :—

Courts-martial and the kinds thereof.

- (1) general courts-martial ;
- (2) district courts-martial ;
- (3) summary general courts-martial ; and
- (4) summary courts-martial.

54. A general court-martial may be convened by the Commander-in-Chief in India, or by any officer empowered in this behalf by warrant of the Commander-in-Chief in India.

Power to convene general courts-martial.

55. A district court-martial may be convened by any officer having power to convene a general court-martial, or by any officer empowered in this behalf by warrant of any such officer.

Power to convene district courts-martial.

56. A warrant issued under section 54 or section 55 may contain such restrictions, reservations or conditions as the officer issuing it may think fit.

Contents of warrant issued under section 54 or section 55.

¹57. A general court-martial shall consist of not less than five British officers or Indian commissioned officers, each of whom has held a commission for not less than three whole years and of whom not less than four are of a rank not below that of Captain.]

Composition of general courts-martial.

58. A district court-martial shall consist of not less than three ²[British officers or Indian commissioned officers].

Composition of district courts-martial.

59. [Convening order to state if larger number of officers is not available.] Rep. by the Indian Army (Amendment) Act, 1934 (XXXIII of 1934), s. 22.

³60. A general, summary general or district court-martial may be composed of either British officers or Indian commissioned officers or of both British officers and Indian commissioned officers.]

Composition of general, summary general or district court-martial.

61. [Claim to trial by British officers.] Rep. by the Indian Army (Amendment) Act, 1934 (XXXIII of 1934), s. 24.

¹ Subs. by the Indian Army (Amendment) Act, 1934 (33 of 1934), s. 20, for the original section.

² Subs. by s. 21, *ibid.*, for "officers".

³ Subs. by s. 23, *ibid.*, for the original section.

(Chapter VIII.—Courts-martial.)

Convening of
summary
general
courts-
martial.

62. The following authorities shall have power to convene a summary general court-martial, namely :—

- (a) an officer empowered in this behalf by an order of the ¹[Central Government] or of the Commander-in-Chief in India ;
- (b) on active service, the officer commanding the forces in the field, or any officer empowered by him in this behalf ;
- (c) an officer commanding any detached portion of His Majesty's troops upon active service when, in his opinion, it is not practicable, with due regard to discipline and the exigencies of the service, that an offence should be tried by an ordinary general court-martial.

Composition
of summary
general
courts-
martial.

63. A summary general court-martial shall consist of not less than three ²[British officers or Indian commissioned officers].

Summary
courts-
martial.

64. (1) A summary court-martial may be held—

- (a) by the commanding officer of any corps or department of His Majesty's Indian Forces, or of any detachment of those forces ;
- (b) by the commanding officer of any British corps or detachment to which details subject to this Act are attached.

(2) At every summary court-martial the officer holding the trial shall alone constitute the court, but the proceedings shall be attended throughout by two other officers who shall not, as such, be sworn or affirmed.

Dissolution
of courts.

65. (1) If a court-martial after the commencement of a trial is reduced below the smallest number of officers of which it is by this Act required to consist, it shall be dissolved.

* * * * *

(2) If, on account of the illness of the accused before the finding, it is impossible to continue the trial, a court-martial shall be dissolved.

(3) Where a court-martial is dissolved under this section, the accused may be tried again.

Jurisdiction of Courts-martial.

Prohibition
of second
trial.

66. When any person subject to this Act has been acquitted or convicted of an offence by a court-martial or by a criminal court, or has been summarily dealt with for an offence under section 20 or section 22, he shall not be liable to be tried again for the same offence by a court-martial or dealt with summarily in respect of it under either of the said sections.

¹ Subs. by the A. O. for "G. G. in C."

² Subs. by the Indian Army (Amendment) Act, 1934 (33 of 1934), s. 25, for "officers".

³ The proviso rep. by s. 26, *ibid.*

(Chapter VIII.—Courts-martial.)

¹[67. No trial by court-martial of any person subject to this Act for any offence (other than an offence of mutiny, desertion or fraudulent enrolment) shall be commenced after the expiration of three years from the date of such offence, and no such trial for an offence of desertion (other than desertion on active service) or of fraudulent enrolment shall be commenced if the person in question ²[(not being an Indian commissioned officer)] has, subsequently to the commission of the offence, served continuously in an exemplary manner for not less than three years with any portion of His Majesty's regular forces. Limitation of trial.

Explanation.—For the purposes of this section, 'mutiny' means any of the offences specified in clauses (a), (b) and (c) of section 27.]

68. Any person subject to this Act who commits any offence against it may be tried and punished for such offence in any place whatever. Place of trial.

Adjustment of the jurisdiction of Courts-martial and Criminal Courts.

69. When a criminal court and a court-martial have each jurisdiction in respect of an offence, it shall be in the discretion of the prescribed military authority to decide before which court the proceedings shall be instituted, and, if that authority decides that they shall be instituted before a court-martial, to direct that the accused person shall be detained in military custody. Order in case of concurrent jurisdiction.

70. (1) When a criminal court having jurisdiction is of opinion that proceedings ought to be instituted before itself in respect of any alleged offence, it may, by written notice, require the prescribed military authority at its option either to deliver over the offender to the nearest Magistrate to be proceeded against according to law, or to postpone proceedings pending a reference to the ³[Central Government]. Power of criminal court to require delivery of offender.

(2) In every such case the said authority shall either deliver over the offender in compliance with the requisition or shall forthwith refer the question as to the court before which the proceedings are to be instituted for the determination of the ³[Central Government], whose order upon such reference shall be final.

71. (1) Notwithstanding anything contained in section 26 of the General Clauses Act, 1897; or in section 403 of the Code of Criminal Procedure, 1898, a person convicted or acquitted by a court-martial may be afterwards tried by a criminal court for the same offence or on the same facts. Trial by court-martial no bar to subsequent trial by criminal court.

(2) If a person sentenced by a court-martial in pursuance of this Act to punishment for an offence is afterwards tried by a criminal court for the

¹ Subs. by the Indian Army (Amendment) Act, 1920 (37 of 1920), s. 8, for the section which had been subs. by the Repealing and Amending Act, 1919 (18 of 1919), s. 2 and Sch. I, for the original section.

² Ins. by the Indian Army (Amendment) Act, 1934 (33 of 1934), s. 27.

³ Subs. by the A. O. for "G. G. in C."

(Chapter VIII.—Courts-martial.)

same offence or on the same facts, that court shall, in awarding punishment, have regard to the military punishment he may already have undergone.

Powers of Courts-martial.

Powers of
general and
summary
general
courts-
martial.

72. A general or summary general court-martial shall have power to try any person subject to this Act for any offence made punishable therein and to pass any sentence authorized by this Act.

Powers of
district
court-
martial.

73. A district court-martial shall have power to try any person subject to this Act other than an officer for any offence made punishable therein, and to pass any sentence authorized by this Act other than a sentence of death, or transportation, or imprisonment for a term exceeding two years :

¹[Provided that a district court-martial shall not award to a warrant officer any punishment other than ²[the punishments specified in clauses (g), (gg) and (h) of section 43 or], either in addition to or in substitution for any such punishment, the punishment specified in clause (d) or the punishment specified in clause (f) of that section.]

Offences
triable by
summary
court-
martial.

74. A summary court-martial may try any offence punishable under any of the provisions of this Act :

Provided that when there is no grave reason for immediate action, and reference can without detriment to discipline be made to the officer empowered to convene a district court-martial ³[or on active service a summary general court-martial] for the trial of the alleged offender, an officer holding a summary court-martial shall not try without such reference any of the following offences, namely :—

- (a) any offence punishable under sections 25, 27, clauses (a), (b) or (c), 33 ⁴[or 41], or
- (b) any offence against the officer holding the court.

Persons
triable by
summary
court-
martial.

75. A summary court-martial may try any person subject to this Act and under the command of the officer holding the court, except an officer or warrant officer.

Sentences
awardable
by summary
court-
martial.

76. (1) A summary court-martial ⁵* * * may pass any sentence which can be passed under this Act, except a sentence of death or transportation, or of imprisonment for a term exceeding one year.

6* * * * *

¹ Ins. by the Indian Army (Amendment) Act, 1934 (33 of 1934), s. 28.

² Subs. by the Indian Army (Amendment) Act, 1935 (7 of 1935), s. 3, for "the punishment specified in clause (h) of section 43 or".

³ Ins. by the Indian Army (Amendment) Act, 1918 (11 of 1918), s. 15.

⁴ Subs. by Act 33 of 1934, s. 29, for "41 or 42".

⁵ The words "held by the commanding officer of a corps or department" rep. by the Indian Army (Amendment) Act, 1917 (10 of 1917), s. 4.

⁶ Sub-section (2) of s. 76 rep. by s. 4, *ibid.*

(Chapter VIII.—Courts-martial.)

Procedure at Trials by Court-martial.

77. At every general, district or summary general court-martial the senior President member shall sit as president.

78. Every general court-martial shall, and every district court-martial Judge Advocate. may, be attended by a judge advocate, who shall be either an officer belonging to the department of the Judge Advocate General in India, or, if no such officer is available, a person appointed by the convening officer.

79. [Superintending officer.] Rep. by the Indian Army (Amendment) Act, 1934 (XXXIII of 1934), s. 30.

80. (1) At all trials by general, district or summary general courts-martial, Challenges. as soon as the court is assembled, the names of the president and members shall be read over to the accused, who shall thereupon be asked whether he objects to being tried by any officer sitting on the court.

(2) If the accused objects to any such officer, his objection, and also the reply thereto of the officer objected to, shall be heard and recorded, and the remaining officers of the court shall, in the absence of the challenged officer, decide on the objection.

(3) If the objection is allowed by one-half or more of the votes of the officers entitled to vote, the objection shall be allowed, and the member objected to shall retire, and his vacancy may be filled in the prescribed manner by another officer, subject to the same right of the accused to object.

(4) When no challenge is made, or when challenge has been made and disallowed, or the place of every officer successfully challenged has been filled by another officer to whom no objection is made or allowed, the court shall proceed with the trial.

81. (1) Every decision of a court-martial shall be passed by an absolute Voting of majority of votes ; and where there is an equality of votes, as to either finding members. or sentence, the decision shall be in favour of the accused.

(2) In matters other than a challenge or the finding or sentence, the president shall have a casting vote.

82. An oath or affirmation in the prescribed form shall be administered to every member of every court-martial and to the judge advocate ¹* * * Oaths of president and members. before the commencement of the trial.

83. Every person giving evidence at a court-martial shall be examined on oath or affirmation, and shall be duly sworn or affirmed in the prescribed form. Oaths of witnesses.

84. (1) The convening officer, the president of the court, the judge advocate, or the commanding officer of the accused person, may, by summons under his hand, require the attendance ²* * * , at a time and place to be mentioned in the summons, of any person either to give evidence or to produce any document or other thing. Summoning witnesses and production of documents.

¹ The words "or superintending officer" rep. by the Indian Army (Amendment) Act, 1934 (33 of 1934), s. 31.

² The words "before the court" rep. by s. 32, *ibid*.

(Chapter VIII.—Courts-martial.)

(2) In the case of a witness amenable to military authority, the summons shall be sent to the officer commanding the corps, department or detachment to which he belongs, and such officer shall serve it upon him accordingly.

(3) In the case of any other witness, the summons shall be sent to the Magistrate within whose jurisdiction he may be or reside, and such Magistrate shall give effect to the summons as if the witness were required in the Court of such Magistrate.

(4) When a witness is required to produce any particular document or other thing in his possession or power, the summons shall describe it with convenient certainty.

(5) Nothing in this section shall be deemed to affect the Indian Evidence Act, 1872, sections 123 and 124, or to apply to any letter, postcard, telegram¹ of 1872. or other document in the custody of the postal or telegraph authorities.

(6) If any document in such custody is, in the opinion of any District Magistrate, Chief Presidency Magistrate, High Court or Court of Session, wanted for the purpose of any court-martial, such Magistrate or Court may require the postal or telegraph authorities, as the case may be, to deliver such document to such person as such Magistrate or Court may direct.

(7) If any such document is, in the opinion of any other Magistrate or of any Commissioner of Police or District Superintendent of Police, wanted for any such purpose, he may require the postal or telegraph authorities, as the case may be, to cause search to be made for and to detain such document pending the orders of any such District Magistrate, Chief Presidency Magistrate or Court.

Commis-
sions.

85. (1) Whenever, in the course of a trial by court-martial, it appears to the court that the examination of a witness is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which, in the circumstances of the case, would be unreasonable, such court may address the Judge Advocate General in order that a commission to take the evidence of such witness may be issued.

(2) The Judge Advocate General may then, if he thinks necessary, issue a commission to any District Magistrate or Magistrate of the first class, within the local limits of whose jurisdiction such witness resides, to take the evidence of such witness.

¹[(3) When the witness resides in any Indian State or tribal area in which there is an officer representing the Central Government or the Crown Representative, the commission may be issued to that officer.]

(4) The Magistrate or officer to whom the commission is issued, or, if he is the District Magistrate, he or such Magistrate of the first class as he appoints in this behalf, shall proceed to the place where the witness is or

¹ Subs. by the A. O. for the original sub-section.

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shall summon the witness before him and shall take down his evidence in the same manner, and may for this purpose exercise the same powers, as in trials of warrant cases under the Code of Criminal Procedure, 1898.

(5) Where the commission is issued to such officer as is mentioned in sub-section (3), he may delegate his powers and duties under the commission to any officer subordinate to him whose powers are not less than those of a Magistrate of the first class in British India.

(6) When the witness resides out of India, the commission may be issued to any British consular officer, British Magistrate or other British official competent to administer an oath or affirmation in the place where such witness resides.

(7) The prosecutor and the accused person in any case in which a commission is issued may respectively forward any interrogatories in writing which the court may think relevant to the issue, and the Magistrate or officer to whom the commission is issued shall examine the witness upon such interrogatories.

(8) The prosecutor and the accused person may appear before such Magistrate or officer by pleader or, except in the case of an accused person in custody, in person, and may examine, cross examine and re-examine (as the case may be) the said witness.

(9) After any commission issued under this section has been duly executed, it shall be returned, together with the deposition of the witness examined thereunder, to the Judge Advocate General.

(10) On receipt of a commission and deposition returned under sub-section (9), the Judge Advocate General shall forward the same to the court at whose instance the commission was issued or, if such court has been dissolved, to any other court convened for the trial of the accused person; and the commission, the return thereto and the deposition shall be open to the inspection of the prosecutor and the accused person, and may, subject to all just exceptions, be read in evidence in the case by either the prosecutor or the accused, and shall form part of the proceedings of the court.

(11) In every case in which a commission is issued under this section the trial may be adjourned for a specified time reasonably sufficient for the execution and return of the commission.

Explanation.—In this section, the expression “Judge Advocate General” means the Judge Advocate General in India, and includes a Deputy Judge Advocate General.

86. (1) A person charged before a court-martial with desertion may be found guilty of attempting to desert or of being absent without leave.

(2) A person charged before a court-martial with attempting to desert may be found guilty of desertion or of being absent without leave.

Conviction of one offence permissible on charge of another.

(Chapter VIII.—Courts-martial.)

(3) A person charged before a court-martial with any of the following offences specified in section 31, that is to say, theft, dishonest mis-appropriation or conversion to his own use of property entrusted to him, or dishonestly receiving or retaining property in respect of which any of the aforesaid offences has been committed knowing or having reason to believe it to have been stolen or dishonestly misappropriated or converted, may be found guilty of any other of these offences with which he might have been charged.

(4) A person charged before a court-martial with an offence punishable under section 41 ¹* * may be found guilty of any other offence of which he might have been found guilty if the provisions of the Code of Criminal Procedure, 1898, were applicable.

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(5) A person charged before a court-martial with any other offence under this Act may, on failure of proof of an offence having been committed in circumstances involving a more severe punishment, be found guilty of the same offence as having been committed in circumstances involving a less severe punishment.

²[(6) A person charged before a court-martial with any offence under this Act may be found guilty of having attempted to commit or of abetment of that offence although the attempt or abetment is not separately charged.]

87. No sentence of death shall be passed by any court-martial without the concurrence of two-thirds at the least of the members of the court.

Majority
requisite to
sentence of
death.

Evidence before Courts-martial.

88. The Indian Evidence Act, 1872, shall, subject to the provisions of this Act, apply to all proceedings before a court-martial.

I of 1872.

89. A court-martial may take judicial notice of any matter within the general military knowledge of the members.

General rule
as to
evidence.
Judicial
notice.

90. In any proceeding under this Act, any application, certificate, warrant, reply or other document purporting to be signed by an officer in the ³[service of the Crown] shall, on production, be presumed to have been duly signed by the person and in the character by whom and in which it purports to have been signed, until the contrary is shown.

Presump-
tion as to
signatures.

91. Any enrolment paper purporting to be signed by an enrolling officer shall, in proceedings under this Act, be evidence of the person enrolled having given the answers to questions which he is therein represented as having given. ⁴[The enrolment of such person may be proved by the production of a copy of his enrolment paper purporting to be certified to be a true copy by the officer having the custody of the enrolment paper.]

Enrolment
paper.

¹ The words and figures "or section 42" rep. by the Indian Army (Amendment) Act, 1934 (33 of 1934), s. 33.

² Ins. by the Indian Army (Amendment) Act, 1918 (11 of 1918), s. 16.

³ Subs. by the A. O. for "civil or military service of the Govt."

⁴ Subs. by Act 11 of 1918, s. 17, for "and of the enrolment of such person".

(Chapter VIII.—Courts-martial.)

¹[91A. (1) A letter, return or other document respecting the service of any person in, or the dismissal or discharge of any person from, any portion of His Majesty's Forces, or respecting the circumstance of any person not having served in, or belonged to, any portion of His Majesty's Forces, if purporting to be signed by or on behalf of the ²[Central Government] or the Commander-in-Chief in India or by any prescribed officer, shall be evidence of the facts stated in such letter, return or other document. Presumption as to certain documents.

(2) An Army List or Gazette purporting to be published by authority shall be evidence of the status and rank of the officers or warrant officers therein mentioned, and of any appointment held by such officers or warrant officers and of the corps, battalion or arm or branch of the service to which such officers or warrant officers belong.

(3) Where a record is made in any regimental book, in pursuance of this Act or of any rules made thereunder or otherwise in pursuance of military duty, and purports to be signed by the commanding officer or by the officer whose duty it is to make such record, such record shall be evidence of the facts thereby stated.

(4) A copy of any record in any regimental book purporting to be certified to be a true copy by the officer having the custody of such book shall be evidence of such record.

(5) Where any person subject to this Act is being tried on a charge of desertion or of absence without leave, and such person has surrendered himself into the custody of, or has been apprehended by, a provost-marshal, assistant provost-marshal or other officer, or any portion of His Majesty's Forces, a certificate purporting to be signed by such provost-marshal, assistant provost-marshal or other officer, or by the commanding officer of that portion of His Majesty's Forces and stating the fact, date and place of such surrender or apprehension, shall be evidence of the matters so stated.

(6) When any person subject to this Act is being tried on a charge of desertion or of absence without leave, and such person has surrendered himself into the custody of, or has been apprehended by, a police-officer not below the rank of an officer in charge of a police-station, a certificate purporting to be signed by such police-officer and stating the fact, date and place of such surrender or apprehension, shall be evidence of the matters so stated.]

³[(7) Any document purporting to be a report under the hand of any Chemical Examiner or Assistant Chemical Examiner to Government upon any matter or thing duly submitted to him for examination or analysis and report may be used as evidence in any proceeding under this Act.]

92. (1) If at any trial for desertion, absence without leave, overstaying leave or not rejoining when warned for service, the person tried states in his defence any sufficient or reasonable excuse for his unauthorized absence, and Reference by accused to Government officer.

¹ S. 91A ins. by the Indian Army (Amendment) Act, 1918 (11 of 1918), s. 18.

² Subs. by the A. O. for "G. G. in C."

³ Sub-section (7) ins. by the Indian Army (Amendment) Act, 1923 (33 of 1923), s. 3.

(Chapter VIII.—Courts-martial.)

refers in support thereof to any officer in the ¹[service of the Crown] or if it appears that any such officer is likely to prove or disprove the said statement in the defence, the court shall address such officer and adjourn until his reply is received.

(2) The written reply of any officer so referred to shall, if signed by him, be received in evidence and have the same effect as if made on oath before the court.

(3) If the court is dissolved before the receipt of such reply, or if the court omits to comply with the provisions of this section, the convening officer may, at his discretion, annul the proceedings and order a fresh trial by the same or another court-martial.

Evidence of previous convictions and general character.

93. (1) When any person subject to this Act has been convicted by a court-martial of any offence, such court-martial may inquire into, and receive and record evidence of, any previous convictions of such person, either by a court-martial or by a criminal court, and may further inquire into and record the general character of such person, and such other matters as may be prescribed.

(2) Evidence received under this section may be either oral, or in the shape of entries in, or certified extracts from, court-martial books or other official records; and it shall not be necessary ²* * * to give notice before trial to the person tried that evidence as to his previous convictions or character will be received.

(3) At a summary court-martial the officer holding the trial may, if he thinks fit, record any previous convictions against the offender, his general character, and such other matters as may be prescribed, as of his own knowledge, instead of requiring them to be proved under the foregoing provisions of this section.

Confirmation and Revision of Findings and Sentences.

Finding and sentence invalid without confirmation.

Power to confirm finding and sentence of general court-martial.

Power to confirm finding and sentence of district court-martial.

94. No finding or sentence of a general or district court-martial shall be valid except so far as it may be confirmed as provided by this Act.

95. The findings and sentences of general courts-martial may be confirmed by the Commander-in-Chief in India, or by any officer empowered in this behalf by warrant of the Commander-in-Chief in India.

96. The findings and sentences of district courts-martial may be confirmed by any officer having power to convene a general court-martial, or by any officer empowered in this behalf by warrant of any such officer.

¹ Subs. by the A. O. for "civil or military service of Govt."

² The words "to prove the signature to such certified extracts, nor shall it be necessary" rep. by the Indian Army (Amendment) Act, 1918 (11 of 1918), s. 26 and Sch.

(Chapter VIII.—Courts-martial.)

97. A warrant issued under section 95 or section 96 may contain such restrictions, reservations or conditions as the officer issuing it may think fit.

Contents of
warrant
issued under
section 95 or
section 96.

98. (1) The finding and sentence of a summary general court-martial shall require to be confirmed by the convening officer ¹[or if the convening officer so directs, by an authority superior to the convening officer]—

Confirma-
tion of
finding and
sentence.

- (a) in the case of the trial of an officer,
- (b) in the case of an acquittal or a sentence of death or transportation or imprisonment for a term exceeding two years, and
- (c) in any other case if so ordered by the ²[convening] officer.

(2) Save as provided in sub-section (1), a sentence passed by a summary general court-martial shall not require to be confirmed, but may be carried out forthwith.

99. Subject to such restrictions as may be contained in any warrant issued under section 95 or section 96, a confirming officer may, when confirming the sentence of a court-martial, mitigate or remit the punishment thereby awarded, or commute that punishment for any less punishment or punishments to which the offender might have been sentenced by the court-martial :

Power of
confirming
officer to
mitigate,
remit or
commute
sentences.

Provided that a sentence of transportation shall not be commuted for a sentence of imprisonment for a term exceeding the term of transportation awarded by the court.

³99A. When any person subject to this Act is tried and sentenced by court-martial while on board ship, the finding and sentence so far as not confirmed and executed on board ship may be confirmed and executed in like manner as if such person had been tried at the port of disembarkation.]

Confirma-
tion of
finding and
sentence on
board ship.

100. (1) Any finding or sentence of a court-martial which requires confirmation may be once revised by order of the confirming officer ; and on such revision, the court, if so directed by him, may take additional evidence.

Revision of
finding or
sentence.

(2) The court, on revision, shall consist of the same officers as were present when the original decision was passed, unless any of those officers are unavoidably absent.

(3) In case of such unavoidable absence the cause thereof shall be duly certified in the proceedings, and the court shall proceed with the revision, provided that, if a general court-martial, it still consists of five officers, or if a district court-martial, of three officers.

101. The finding and sentence of a summary court-martial shall not require to be confirmed, but may be carried out forthwith :

Finding and
sentence of
a summary
court-
martial.

Provided that, if the officer holding the trial is of less than five years' service, he shall not, except on active service, carry into effect any sentence until it has received the approval of an officer commanding not less than a corps.

¹ Ins. by the Indian Army (Amendment) Act, 1918 (11 of 1918), s. 19 (1).

² Subs. by s. 19 (2), *ibid.*, for "said".

³ Ins. by s. 20, *ibid.*

(Chapter VIII.—Courts-martial.)

Transmission
of proceed-
ings of
summary
courts-
martial.

102. The proceedings of every summary court-martial shall without delay be forwarded to the officer commanding the division or brigade within which the trial was held, or to the prescribed officer; and such officer, or the Commander-in-Chief in India, or the officer commanding the army, ¹[or army corps,] in which the trial was held, may, for reasons based on the merits of the case, but not on any merely technical grounds, set aside the proceedings or reduce the sentence to any other sentence which the court might have passed.

Substitution
of valid
for invalid
sentence.

103. Where a sentence passed by a court-martial which has been confirmed, or which does not require confirmation, is found for any reason to be invalid, the authority who would have had power under section 112 to commute the punishment awarded by the sentence if it had been valid may pass a valid sentence :

Provided that the punishment awarded by the sentence so passed shall not be higher in the scale of punishments than, or in excess of, the punishment awarded by the invalid sentence.

Provision in
the case of
accused being
lunatic.

²**103A.** (1) Whenever, in the course of a trial by court-martial, it appears to the Court that the person charged is of unsound mind and consequently incapable of making his defence, or that such person committed the act alleged but was by reason of unsoundness of mind incapable of knowing the nature of the act or that it was wrong or contrary to law, the Court shall record a finding accordingly, and the President of the Court or the officer holding the trial, as the case may be, shall forthwith report the case to the confirming officer, or, in the case of a court-martial whose finding does not require confirmation, to the prescribed officer.

(2) A confirming officer to whom a case is reported under sub-section (1) may, if he does not confirm the finding, take steps to have the accused person tried by the same or another court-martial for the offence with which he was originally charged.

(3) A prescribed officer to whom a case is reported under sub-section (1) and a confirming officer confirming a finding in any case so reported to him shall order the accused person to be kept in custody in the prescribed manner, and shall report the case for the orders of the ³[Central Government].

(4) On receipt of a report under sub-section (3), the ³[Central Government] may order the accused person to be detained in a lunatic asylum or other suitable place of safe custody.

(5) Where an accused person, having been found by reason of unsoundness of mind to be incapable of making his defence, is in custody or under detention, the prescribed officer may—

(a) if such person is in custody under sub-section (3), on the report of a medical officer that he is capable of making his defence, or

¹ Ins. by the Indian Army (Amendment) Act, 1918 (11 of 1918), s. 6.

² S. 103A ins. by the Indian Army (Amendment) Act, 1923 (33 of 1923), s. 4.

³ Subs. by the A. O. for "G. G. in C."

(Chapter VIII.—Courts-martial. Chapter IX.—Execution of Sentences.)

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- (b) if such person is detained under sub-section (4), on a certificate such as is referred to in section 473 of the Code of Criminal Procedure, 1898,

take steps to have such person tried by the same or another court-martial for the offence with which he was originally charged or, provided that the offence is a civil offence, by a Criminal Court.

¹[(5A) Where any person is in custody under sub-section (3) or under detention under sub-section (4),—

- (a) if such person is in custody under sub-section (3), on the report of a medical officer, or

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- (b) if such person is detained under sub-section (4), on a certificate from any of the authorities empowered to grant a certificate under section 473 of the Code of Criminal Procedure, 1898, that, in the judgment of such officer or authority, such person may be released without danger of his doing injury to himself or to any other person, the ²[Central Government] may thereupon order such person to be released, or to be detained in custody, or to be transferred to a public lunatic asylum if he has not been already sent to such an asylum.

(5B) Where any relative or friend of any person who is in custody under sub-section (3) or under detention under sub-section (4) desires that he shall be delivered to his care and custody, the ²[Central Government] may, upon the application of such relative or friend and on his giving security to the satisfaction of the ²[Central Government] that the person delivered shall—

- (a) be properly taken care of and prevented from doing injury to himself or to any other person, and

- (b) be produced for the inspection of such officer, and at such times and places, as the ²[Central Government] may direct, order such person to be delivered to such relative or friend.]

(6) A copy of every order made by the prescribed officer under sub-section (5) shall forthwith be sent to the ²[Central Government].]

CHAPTER IX.

EXECUTION OF SENTENCES.

104. In awarding a sentence of death a court-martial shall, in its discretion, direct that the offender shall suffer death by being hanged by the neck until he be dead, or shall suffer death by being shot to death. Form of sentence of death.

¹ Ins. by the Indian Army (Amendment) Act, 1935 (7 of 1935), s. 4.

² Subs. by the A. O. for "G. G. in C."

(Chapter IX.—Execution of Sentences.)

105. [*Imprisonment to be in military custody.*] Rep. by the Indian Army (Amendment) Act, 1934 (XXXIII of 1934), s. 34.

Commence-
ment of
sentence of
transporta-
tion or im-
prisonment.

106. Whenever any person is sentenced under this Act to transportation or imprisonment, the term of his sentence shall, whether it has been revised or not, be reckoned to commence on the day on which the original proceedings were signed by the president or, in the case of a summary court-martial, by the court.

Execution of
sentence of
transporta-
tion or im-
prisonment.

107. Whenever any sentence of transportation or ¹* imprisonment is passed under this Act, or whenever any sentence so passed is commuted to transportation or to ¹* imprisonment, the commanding officer of the person under sentence, or such other officer as may be prescribed, shall forward a warrant in the prescribed form to the officer in charge of the civil prison in which such person is to be confined, and shall forward him to such prison with the warrant :

Provided that, in the case of a sentence of ¹* imprisonment for a period not exceeding three months, the confirming officer, or in the case of a sentence which does not require confirmation, the court, may direct that the sentence shall be carried out by confinement in military custody :

²[Provided further that on active service a sentence of ¹* imprisonment may be carried out by confinement in such place as the officer commanding the forces in the field may, from time to time, appoint.]

Execution of
sentence of
imprison-
ment in
special cases.

108. Whenever, in the opinion of an officer commanding an army, ³[army corps], division or independent brigade, any sentence or portion of a sentence of imprisonment cannot, for special reasons, conveniently be carried out in accordance with the provisions of ⁴* * * * section 107, such officer may direct that such sentence or portion of sentence shall be carried out by confinement in any civil prison or other fit place.

Offenders
sentenced to
transporta-
tion how
dealt with
until trans-
ported.

⁵[**108A.** In every case in which a sentence of transportation is passed under this Act, the offender, until he is transported, shall be dealt with in the same manner as if sentenced to rigorous imprisonment, and shall be deemed to have been undergoing his sentence of transportation during the term of his imprisonment.]

Communi-
cation of
certain
orders to
civil prison
officers.

109. Whenever an order is duly made under this Act setting aside or varying any sentence, order or warrant under which any person is confined in a civil prison, a warrant in accordance with such order shall be forwarded by the prescribed officer to the officer in charge of the prison in which such person is confined.

Limit of
solitary con-
finement.

110. In executing a sentence of solitary confinement such confinement shall in no case exceed fourteen days at a time, with intervals between the periods of solitary confinement of not less duration than such periods, and,

¹ The word "rigorous" rep. by the Indian Army (Amendment) Act, 1934 (33 of 1934), s. 35.

² This proviso was ins. by the Indian Army (Amendment) Act, 1918 (11 of 1918), s. 21.

³ Ins. by s. 6, *ibid.*

⁴ The words and figures "section 105 or " rep. by Act 33 of 1934, s. 36.

⁵ Ins. by Act 11 of 1918, s. 22.

(Chapter IX.—Execution of Sentences. Chapter X.—Pardons and Remissions.)

when the imprisonment awarded exceeds three months, the solitary confinement shall not exceed seven days in any one month of the whole imprisonment awarded, with intervals between the periods of solitary confinement of not less duration than such periods.

111. [*Instrument of corporal punishment.*] Rep. by the Indian Army (Amendment) Act, 1920 (XXXVII of 1920), s. 10.

¹[111A. When a sentence of fine is imposed by a court-martial under section 41 ^{2*} * *, whether the trial was held within British India or not, a copy of such sentence, signed and certified by the president of the court or the officer holding the trial, as the case may be, may be sent to any Magistrate in British India, and such Magistrate shall thereupon cause the fine to be recovered in accordance with the provisions of the Code of Criminal Procedure, 1898, for the levy of fines as if it was a sentence of fine imposed by such Magistrate.]

Execution of sentence of fine.

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CHAPTER X.

PARDONS AND REMISSIONS.

³[112. (1) When any person subject to this Act has been convicted by a court-martial of any offence, the ⁴[Central Government] or the Commander-in-Chief in India or, in the case of a sentence which he could have confirmed or which did not require confirmation, the officer commanding the army, army corps, division or independent brigade in which such person at the time of his conviction was serving, or the prescribed officer, may,

Pardons and remissions.

- (a) either without conditions or upon any conditions which the person sentenced accepts, pardon the person or remit the whole or any part of the punishment awarded;
- (b) mitigate the punishment awarded, or commute such punishment for any less punishment or punishments mentioned in this Act :

Provided that a sentence of transportation shall not be commuted for a sentence of imprisonment for a term exceeding the term of transportation awarded by the court.

(2) If any condition on which a person has been pardoned or a punishment has been remitted is, in the opinion of the authority which granted the pardon or remitted the punishment, not fulfilled, such authority may cancel the pardon or remission, and thereupon the sentence of the court shall be carried into effect as if such pardon had not been granted or such punishment had not been remitted :

¹ S. 111A was ins. by the Indian Army (Amendment) Act, 1918 (11 of 1918), s. 23.

² The words and figures " or section 42 " rep. by the Indian Army (Amendment) Act, 1934 (33 of 1934), s. 37.

³ Subs. by Act 11 of 1918, s. 24, for the original section.

⁴ Subs. by the A. O. for " G. G. in C. "

(Chapter X.—Pardons and Remissions. Chapter XI.—Rules.)

Provided that, in the case of a person sentenced to transportation or imprisonment, such person shall undergo only the unexpired portion of his sentence.

(3) When under the provisions of section 49 ¹[a warrant officer or] a non-commissioned officer is deemed to be reduced to the ranks, such reduction shall, for the purposes of this section, be treated as a punishment awarded by sentence of a court-martial.]

CHAPTER XI.

RULES.

Power to
make rules.

113. (1) The ²[Central Government] may make ³rules for the purpose of carrying into effect the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for—

- (a) the ⁴[removal, retirement or discharge] from the service of persons subject to this Act ;
- (b) the amount and incidence of fines to be imposed under section 21 ;
- ⁵[(b)] the specification of the punishments which may be awarded as field punishments under sections 20 and 45 ;]
- (c) the assembly and procedure of courts of inquiry, and the administration of oaths or affirmations by such courts ;
- (d) the convening and constituting of courts-martial ;
- (e) the adjournment, dissolution and sittings of courts-martial ;
- (f) the procedure to be observed in trials by courts-martial ;
- (g) the confirmation and revision of the findings and sentences of courts-martial ;
- (h) the carrying into effect sentences of courts-martial ;
- (i) the forms of orders to be made under the provisions of this Act relating to courts-martial, transportation or imprisonment ; ⁶*
- ⁷[(ii)] the constitution of authorities to decide for what persons, to what amounts and in what manner, provision should be made for dependants under section 52A, and the due carrying out of such decisions ;] ⁸[and]

(j) any matter in this Act directed to be prescribed.

(3) All rules made under this Act shall be published in the ⁹[Official Gazette], and, on such publication, shall have effect as if enacted in this Act.

¹ Ins. by the Indian Army (Amendment) Act, 1934 (33 of 1934), s. 38.

² Subs. by the A. O. for "G. G. in C."

³ For rules under the Act, see Gen. R. and O., Vol. IV, p. 127.

⁴ Subs. by Act 33 of 1934, s. 39, for "discharge".

⁵ Ins. by the Indian Army (Amendment) Act, 1920 (37 of 1920), s. 9.

⁶ The word "and" rep. by the Repealing and Amending Act, 1930 (8 of 1930), s. 2 and Sch. I.

⁷ Ins. by the Indian Army (Amendment) Act, 1917 (10 of 1917), s. 6.

⁸ Ins. by Act 8 of 1930, s. 2 and Sch. I.

⁹ Subs. by the A. O. for "Gazette of India".

(Chapter XII.—Property of Deceased Persons, Deserters and Lunatics.)

CHAPTER XII.

PROPERTY OF DECEASED PERSONS, DESERTERS AND LUNATICS.

¹[114. The following rules are enacted respecting the disposal of the pro- Property of
deceased
persons and
deserters.
perty of every person subject to this Act who dies or deserts :—

(1) The commanding officer of the corps, detachment or department to which the deceased person or deserter belonged shall secure all the moveable property belonging to the deceased or deserter that is in camp or quarters, and cause an inventory thereof to be made, and draw any pay and allowances due to such person.

(2) In the case of a deceased person who has left in a Government savings bank (including any post office savings bank, however named) a deposit not exceeding one thousand rupees, the commanding officer may, if he thinks fit, require the secretary or other proper officer of the bank to pay the deposit to him forthwith, notwithstanding anything in any departmental rules, and after the payment thereof in accordance with such requisition, no person shall have any right in respect of the deposit except as hereinafter provided.

(3) In the case of a deceased person whose representative is on the spot and has given security for the payment of the regimental or other debts in camp or quarters (if any) of the deceased, the commanding officer shall deliver over any property received under clauses (1) and (2) to that representative.

* (4) In the case of a deceased person whose estate is not dealt with under clause (3), and in the case of any deserter, the commanding officer shall cause the moveable property to be sold by public auction, and shall pay the regimental and other debts in camp or quarters (if any), and, in the case of a deceased person, the expenses of his funeral ceremonies, from the proceeds of the sale and from any pay and allowances drawn under clause (1) and from the amount of the deposit (if any) received under clause (2).

(5) The surplus, if any, shall, in the case of a deceased person, be paid to his representative (if any), or in the event of no claim to such surplus being established within twelve months after the death, then the same shall be remitted to the prescribed person.

(6) In the case of a deserter, the surplus (if any) shall be forthwith remitted to the prescribed person and shall, on the expiry of three years from the date of his desertion, be forfeited to His Majesty, unless the deserter shall in the meantime have surrendered or been apprehended.

Explanation.—A person shall be deemed to be a deserter within the meaning of this section who has without authority been absent from duty for a period of sixty days and has not subsequently surrendered or been apprehended. Meaning of
desertion.

115. Property deliverable and money payable to the representative of a deceased person under section 114 may, if the total value or amount thereof does not exceed one thousand rupees, and if the prescribed person thinks fit, Disposal of
certain pro-
perty without
production of
probate, etc.

¹ Subs. by the Indian Army (Amendment) Act, 1914 (15 of 1914), s. 2, for the original section.

(Chapter XII.—Property of Deceased Persons, Deserters and Lunatics.
Chapter XIII.—Miscellaneous.)

be delivered or paid to any person appearing to him to be entitled to receive it or to administer the estate of the deceased, without requiring the production of any probate, letters of administration, certificate or other such conclusive evidence of title; and such delivery or payment shall be a full discharge to those ordering or making the same and to ¹[the Crown] from all further liability in respect of the property or money; but nothing in this section shall affect the rights of any executor or administrator or other representative, or of any creditor, of a deceased person against any person to whom such delivery or payment has been made.

Application
of section
114 to
lunatics.

116. The provisions of section 114 shall, so far as they can be made applicable, apply in the case of a person subject to this Act becoming insane, ²[or, who, being on active service, is officially reported missing :

Provided that, in the case of a person so reported missing, no action shall be taken under sub-sections (2) to (5), inclusive, of the said section, until one year has elapsed from the date of such report.]

CHAPTER XIII.

MISCELLANEOUS.

Military Privileges.

Complaints
against
officers.

117. (1) Any person subject to this Act ³[other than an Indian Commissioned Officer] who deems himself wronged by any superior or other officer, may, if not attached to a troop or company, complain to the officer under whose command or orders he is serving; and may, if attached to a troop or company, complain to the officer commanding the same.

(2) When the officer complained against is the officer to whom any complaint should, under sub-section (1), be preferred, the aggrieved person may complain to such officer's next superior officer.

(3) Every officer receiving any such complaint shall examine into it, and, when necessary, refer it to superior authority :

³[Provided that a decision by an authority competent to dispose of the matter complained of shall be final.]

(4) Every such complaint shall be preferred through such channels as may be from time to time specified by proper authority.

Complaints
by Indian
Commis-

⁴[**117A.** Any Indian commissioned officer who deems himself wronged by his Commanding Officer or any superior officer and who on due application

¹ Subs. by the A. O. for "the Secretary of State for India in Council".

² Ins. by the Indian Army (Amendment) Act, 1920 (2 of 1920), s. 2.

³ Ins. by the Indian Army (Amendment) Act, 1934 (33 of 1934), s. 40.

⁴ Ins. by s. 41, *ibid.*

(Chapter XIII.—Miscellaneous.)

made to his Commanding Officer does not receive the redress to which he considers himself entitled, may complain to the ¹[Central Government]. sioned officers.

118. (1) No president or member of a court-martial, no judge advocate Privileges of persons attending courts-martial.
 2* * *, no party to any proceeding before a court-martial, or his legal practitioner or agent, and no witness acting in obedience to a summons to attend a court-martial, shall, while proceeding to, attending on or returning from a court-martial, be liable to arrest under civil or revenue process.

(2) If any such person is arrested under any such process, he may be discharged by order of the court-martial.

119. (1) No person subject to this Act shall, so long as he belongs to His Majesty's Indian Forces, be liable to be arrested for debt under any process issued by, or by the authority of, any civil or revenue court or revenue officer. Exemption from arrest for debt.

(2) The judge of any such court may examine into any complaint made by such person or his superior officer of the arrest of such person contrary to the provisions of this section, and may, by warrant under his hand, discharge the person, and award reasonable costs to the complainant, who may recover those costs in like manner as he might have recovered costs awarded to him by a decree against the person obtaining the process.

(3) For the recovery of such costs no fee shall be payable to the court by the complainant.

120. Neither the arms, clothes, equipment, accoutrements or necessities of any person subject to this Act, nor any animal used by him for the discharge of his duty, shall be seized, nor shall the pay and allowances of any such person or any part thereof be attached, by direction of any civil or revenue court or any revenue-officer, in satisfaction of any decree or order enforceable against him. Property exempted from attachment.

121. Every person belonging to the Indian Reserve Forces shall, when called out for or engaged upon or returning from training or service, be entitled to all the privileges accorded by sections 119 and 120 to a person subject to this Act. Application of the last two foregoing sections to reservists.

122. (1) On the presentation to any court by or on behalf of any person subject to this Act of a certificate, from the proper military authority, of leave of absence having been granted to or applied for by him for the purpose of prosecuting or defending any suit or other proceeding in such court, the court shall, on the application of such person, arrange, so far as may be possible, for the hearing and final disposal of such suit or other proceeding within the period of the leave so granted or applied for. Priority of hearing by courts of cases in which Indian officers and soldiers are concerned.

(2) The certificate from the proper military authority shall state the first and last day of the leave or intended leave, and set forth a description of the case with respect to which the leave was granted or applied for.

¹ Subs. by the A. O. for "G. G. in C."

² The words "or superintending officer" rep. by the Indian Army (Amendment) Act, 1934 (33 of 1934), s. 42.

(Chapter XIII.—Miscellaneous.)

(3) No fee shall be payable to the court in respect of the presentation of any such certificate, or in respect of any application by or on behalf of any such person for priority for the hearing of his case.

(4) Where the court is unable to arrange for the hearing and final disposal of the suit or other proceeding within the period of such leave or intended leave as aforesaid, it shall record its reasons for having been unable to do so, and shall cause a copy thereof to be furnished to such person on his application without any payment whatever by him in respect either of the application for such copy or of the copy itself.

(5) If in any case a question arises as to the proper military authority qualified to grant such certificate as aforesaid, such question shall be at once referred by the court to an officer commanding a corps, whose decision shall be final.

Deserters and Military Offenders.

Capture of
deserters.

123. (1) Whenever any person subject to this Act deserts, the commanding officer of the corps, department or detachment to which he belongs shall give written information of the desertion to such civil authorities as, in his opinion, may be able to afford assistance towards the capture of the deserter; and such authorities shall thereupon take steps for the apprehension of the said deserter in like manner as if he were a person for whose apprehension a warrant had been issued by a Magistrate, and shall deliver the deserter, when apprehended, to military custody.

(2) Any police-officer may arrest without warrant any person reasonably believed to be subject to this Act and to be travelling without authority, and shall bring him without delay before the nearest Magistrate, to be dealt with according to law.

Arrest by
military
authorities.

124. (1) Any person subject to this Act who is charged with an offence may be taken into military custody.

(2) Any such person may be ordered into military custody by any superior officer.

(3) The charge against every person taken into military custody shall, without unnecessary delay, be investigated by the proper military authority, and, as soon as may be, either proceedings shall be taken for punishing the offence, or such person shall be discharged from custody.

Arrest by
civil
authorities.

125. Whenever any person subject to this Act, who is accused of any offence under this Act, is within the jurisdiction of any Magistrate or police-officer, such Magistrate or officer shall aid in the apprehension and delivery to military custody of such person upon receipt of a written application to that effect signed by his commanding officer.

Inquiry on
absence of
person
subject to
Act.

126. (1) When any person subject to this Act has been absent without due authority from his duty for a period of sixty days, a court of inquiry shall, as soon as practicable, be assembled and, upon oath or affirmation administered in the prescribed manner, shall inquire respecting the absence of the

(Chapter XIII.—Miscellaneous.)

person, and the deficiency, if any, of property of ¹[the Crown] entrusted to his care, or of his arms, ammunition, equipments, instruments, clothing or necessities ; and, if satisfied of the fact of such absence without due authority or other sufficient cause, the court shall declare such absence and the period thereof, and the said deficiency, if any ; and the commanding officer of the corps or department to which the person belongs shall enter in the court-martial book of the corps or department a record of the declaration.

(2) If the person declared absent does not afterwards surrender, or is not apprehended, he shall, for the purposes of this Act, be deemed to be a deserter.

2* * * * *

Disposal of Property.

³[126A. When any property regarding which any offence appears to have been committed, or which appears to have been used for the commission of any offence, is produced before a court-martial during a trial, the court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the trial, and if the property is subject to speedy or natural decay may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

126B. (1) After the conclusion of a trial before any court-martial, the court or the officer confirming the finding or sentence of such court-martial or any authority superior to such officer, or, in the case of a court-martial whose finding or sentence does not require confirmation, the officer commanding the army, army corps, division or brigade within which the trial was held, may make such order as it or he thinks fit for the disposal by destruction, confiscation, delivery to any person claiming to be entitled to possession thereof, or otherwise, of any property or document produced before the court or in its custody, or regarding which any offence appears to have been committed or which has been used for the commission of any offence.

(2) Where any order has been made under sub-section (1) in respect of property regarding which an offence appears to have been committed, a copy of such order signed and certified by the authority making the same may, whether the trial was held within British India or not, be sent to a Magistrate in any presidency-town or district in which such property for the time being is, and such Magistrate shall thereupon cause the order to be carried into effect as if it was an order passed by such Magistrate under the provisions of the Code of Criminal Procedure, 1898.

V of 1898.

Explanation.—In this section the term “property” includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control

¹ Subs. by the A. O. for “the Govt.”

² Sub-section (3) rep. by the Indian Army (Amendment) Act, 1918 (11 of 1918), s. 26 and Sch.

³ Ss. 126A and 126B were ins. by s. 25, *ibid.*

(Chapter XIII.—Miscellaneous.)

Prevention of Seditious Meetings. [1911 : Act X.]

of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange whether immediately or otherwise.]

Repeal.

127. [Repeal.] Rep. by the Repealing Act, 1927 (XII of 1927), s. 2 and Sch.

THE SCHEDULE.—[REPEAL OF ENACTMENTS.] Rep. by the Repealing Act, 1927 (XII of 1927), s. 2 and Sch.

THE PREVENTION OF SEDITIOUS MEETINGS ACT, 1911.

ACT No. X OF 1911.¹

[22nd March, 1911.]

An Act to consolidate and amend the law relating to the prevention of public meetings likely to promote sedition or to cause a disturbance of public tranquillity.

WHEREAS it is expedient to consolidate and amend the law relating to the prevention of public meetings likely to promote sedition or to cause a disturbance of public tranquillity ; It is hereby enacted as follows :—

Short title
and extent.

1. (1) This Act may be called the Prevention of Seditious Meetings Act, 1911.

(2) It extends to the whole of British India, but shall have operation only in such Provinces or parts of Provinces as the ²[Provincial Government] may from time to time notify in the ³[Official Gazette].

Power of
Provincial
Government
to notify
proclaimed
areas.

2. (1) The ⁴[Provincial Government] may, ⁵* * * * * by notification in the ⁶[Official Gazette], declare the whole or any part of a Province, in which this Act is for the time being in operation, to be a proclaimed area.

(2) A notification made under sub-section (1) shall not remain in force for more than six months, but nothing in this sub-section shall be deemed

¹ For Statement of Objects and Reasons, see Gazette of India, 1911, Pt. V, p. 100 ; for Report of Select Committee, see *ibid.*, 1911, Pt. V, p. 100 ; and for Proceedings in Council, see *ibid.*, 1911, Pt. VI, pp. 362 and 452.

This Act has been declared to be in force in the Khondmals District by the Khondmals Laws Regulation, 1936 (4 of 1936), s. 3 and Sch. ; and in the Angul District by the Angul Laws Regulation, 1936 (5 of 1936), s. 3 and Sch.

² Subs. by the A. O. for "G. G. in C."

³ Subs. by the A. O. for "Gazette of India".

⁴ Subs. by the A. O. for "L. G."

⁵ The words "with the previous sanction of the G. G. in C." rep. by the A. O.

⁶ Subs. by the A. O. for "local official Gazette".

to prevent the ¹[Provincial Government] ²* * * * * from making any further notifications in respect of the same area from time to time as it may think fit.

3. (1) In this Act, the expression " public meeting " means a meeting which is open to the public or any class or portion of the public. Definition.

(2) A meeting may be a public meeting notwithstanding that it is held in a private place and notwithstanding that admission thereto may have been restricted by ticket or otherwise.

4. (1) No public meeting for the furtherance or discussion of any subject likely to cause disturbance or public excitement, or for the exhibition or distribution of any writing or printed matter relating to any such subject, shall be held in any proclaimed area— Notice to be given of public meetings.

(a) unless written notice of the intention to hold such meeting and of the time and place of such meeting has been given to the District Magistrate or the Commissioner of Police, as the case may be, at least three days previously ; or

(b) unless permission to hold such meeting has been obtained in writing from the District Magistrate or the Commissioner of Police, as the case may be.

(2) The District Magistrate or any Magistrate of the first class authorized by the District Magistrate in this behalf may, by order in writing, depute one or more Police-officers, not being below the rank of head constable, or other persons, to attend any such meeting for the purpose of causing a report to be taken of the proceedings. Power of Magistrate to cause report to be taken.

(3) Nothing in this section shall apply to any public meeting held under any statutory or other express legal authority, or to public meetings convened by a sheriff, or to any public meetings or class of public meetings exempted for that purpose by the ¹[Provincial Government] by general or special order. Exception.

5. The District Magistrate or the Commissioner of Police, as the case may be, may at any time, by order in writing, of which public notice shall forthwith be given, prohibit any public meeting in a proclaimed area, if, in his opinion, such meeting is likely to promote sedition or disaffection or to cause a disturbance of the public tranquillity. Power to prohibit public meetings.

6. (1) Any person concerned in the promotion or conduct of a public meeting held in a proclaimed area contrary to the provisions of section 4 shall be punished with imprisonment for a term which may extend to six months, or with fine, or with both. Penalties.

(2) Any public meeting which has been prohibited under section 5 shall be deemed to be an unlawful assembly within the meaning of Chapter VIII of the Indian Penal Code and of Chapter IX of the Code of Criminal Procedure, 1898.

7. Whoever, in a proclaimed area, in a public place or a place of public resort, otherwise than at a public meeting held in accordance with, or exempted Penalty for delivery of speeches in

¹ Subs. by the A. O. for " L. G. "

² The words " with the previous sanction of the G. G. in C. " rep. by the A. O.

public
places.

from, the provisions of section 4, without the permission in writing of the Magistrate of the District or of the Commissioner of Police, as the case may be, previously obtained, delivers any lecture, address or speech on any subject likely to cause disturbance or public excitement to persons then present, may be arrested without warrant, and shall be punished with imprisonment for a term which may extend to six months, or with fine, or with both.

Cognizance
of offences.

8. No Court inferior to that of a Presidency Magistrate or of a Magistrate of the first class or Sub-divisional Magistrate shall try any offence against this Act.

9. [Repeals.] *Rep. by the Repealing Act, 1927 (XII of 1927), s. 2 and Sch.*

THE CALCUTTA IMPROVEMENT (APPEALS) ACT, 1911.

ACT XVIII OF 1911.¹

[23rd September, 1911.]

An Act to modify certain provisions of the Calcutta Improvement Act, 1911.

WHEREAS it is expedient to modify the provisions of the Calcutta Improvement Act, 1911², so as to provide in certain cases for an appeal to the High Court from the awards of the Tribunal constituted under that Act ; It is hereby enacted as follows :—

Short title.

1. This Act may be called the Calcutta Improvement (Appeals) Act, 1911.

Definitions.

2. In this Act—

(1) "Court" means the High Court of Judicature at Fort William in Bengal ; and

(2) "Tribunal" has the same meaning as in the Calcutta Improvement Act, 1911². Ben. V of 1911.

Appeal from
awards of
the Tribunal.

3. (1) Notwithstanding anything contained in the Calcutta Improvement Act, 1911², an appeal shall lie to the Court in any of the following cases, namely :— Ben. V of 1911.

(a) where the decision is that of the President of the Tribunal sitting alone in pursuance of clause (b) of section 77 of the said Act :

(b) where the decision is that of the Tribunal, and

(i) the President of the Tribunal grants a certificate that the case is a fit one for appeal, or

(ii) the Court grants special leave to appeal :

¹ For Statement of Objects and Reasons, see Gazette of India, 1911, Pt. V, p. 118 ; for Proceedings in Council, see *ibid.*, Pt. VI, pp. 635, 636 and 680 to 687.

² See Ben. Code.

Provided that the Court shall not grant such special leave unless the President has refused to grant a certificate under sub-clause (i) and the amount in dispute is five thousand rupees or upwards.

(2) An appeal under clause (b) of sub-section (1) shall only lie on ¹[one or more of] the following grounds, namely :—

- (i) the decision being contrary to law or to some usage having the force of law ;
- (ii) the decision having failed to determine some material issue of law or usage having the force of law ;
- (iii) a substantial error or defect in the procedure provided by the said Act which may possibly have produced error or defect in the decision of the case upon the merits.

V of 1908. 4. Subject to the provisions of section 3, the provisions of the Code of Procedure in Civil Procedure, 1908, with respect to appeals from original decrees shall, such appeals. so far as may be, apply to appeals under this Act.

5. The Chief Judge of the Court of Small Causes of Calcutta shall, on application, execute any order passed by the Court on appeal ²[under this Act as if it were] a decree made by himself. Execution of orders of Court.

V of 1908. 6. An appeal under section 3 shall be deemed to be an appeal under the Period of Code of Civil Procedure, 1908, within the meaning of No. 156 of the First limitation for IX of 1908. Schedule to the Indian Limitation Act, 1908. such appeals.

THE COWASJEE JEHANGIR BARONETCY ACT, 1911.

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¹ Ins. by the Repealing and Amending Act, 1914 (10 of 1914), s. 2 and Sch. I.

² Subs. by s. 2 and Sch. I, *ibid.*, for "as if it was".

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ACT No. XIX OF 1911.¹

[23rd September, 1911.]

An Act for settling an annuity of fifty thousand rupees payable by the Secretary of State in Council of India in perpetuity and being of the value of fifteen lakhs of rupees and securities, being Promissory notes of the Government of India or Bonds of the Municipal Corporation of the City of Bombay, the Trustees of the Port of Bombay and the Trustees for the Improvement of the City of Bombay, of the nominal value of ten lakhs of rupees and producing a further annual income of about forty thousand rupees, and two Mansion-houses and hereditaments called respectively "Readymoney House" and "Fort Mansion" in the Island of Bombay, the property of Sir Cawasjee Jehangir, Baronet, so as to accompany and support the title and dignity of a Baronet lately conferred on him by His late Majesty King Edward VII, to hold to him and the heirs male of his body lawfully begotten and to be begotten, and for other purposes connected therewith.

Preamble.

WHEREAS by Letters Patent of His Majesty King Edward VII, by the Grace of God of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, King, Defender of the Faith, dated at Westminster on or about the 16th day of July in the eighth year of His Reign, and by Warrant under the King's sign-manual, His said Majesty made known that He, of His special Grace, certain knowledge and mere motion, had erected, appointed and created His trusty and well beloved Sir Cawasjee Jehangir of Bombay, Knight, to the dignity, state and degree of a Baronet, and him, the said Sir Cawasjee Jehangir, for His Majesty, His heirs and successors, He

¹ For Statement of Objects and Reasons, see Gazette of India, 1911, Pt. V, p. 123 ; and for Proceedings in Council, see *ibid.*, Pt. VI, pp. 655 and 687.

did erect, appoint and create a Baronet of the United Kingdom of Great Britain and Ireland by the said Letters Patent, to hold to him and the heirs male of his body lawfully begotten and to be begotten ;

and whereas the said Sir Cawasjee Jehangir is desirous of settling in perpetuity such property on himself and the heirs male of his body who may succeed to the said Baronetcy as shall be adequate to support the dignity of the title conferred on him and them as aforesaid ;

and whereas the said Sir Cawasjee Jehangir is seised of two Mansion-houses and hereditaments both situate in the Island of Bombay called respectively "Readymoney House" and "Fort Mansion" and has an absolute estate of inheritance therein, and is entitled, by an indenture made the 20th day of October in the year one thousand eight hundred and seventy-seven, to an annuity of fifty thousand rupees payable by the Secretary of State in Council of India in perpetuity and being of the value of fifteen lakhs of rupees and is desirous of settling the said annuity of fifty thousand rupees and securities, being promissory notes of the Government of India or bonds of the Municipal Corporation of the City of Bombay, the Trustees of the Port of Bombay and the Trustees for the Improvement of the City of Bombay, of the nominal value of ten lakhs of rupees and producing a further annual income of about forty thousand rupees and the said Mansion-houses and hereditaments, to the uses, upon the trusts and for the purposes hereinafter limited and declared, concerning the same respectively ;

and whereas the said Sir Cawasjee Jehangir is desirous that the heirs male of his body, to whom the said title and dignity of Baronet shall descend, shall, at the time of such descent upon them respectively, take and bear the names of "Cawasjee Jehangir" in lieu of any other name or names whatever which they respectively may bear at the time of such descent on them respectively ; and he is also desirous that the Accountant General, Bombay, the Collector of Bombay and the Chief Presidency Magistrate, Bombay, all for the time being, shall be trustees of the aforesaid annuity, securities, Mansion-houses and hereditaments, and be likewise the trustees for carrying into execution the general purposes and powers of this Act, with relation to the said annuity and securities and also with relation to the said Mansion-houses and hereditaments ;

and whereas the said Sir Cawasjee Jehangir is desirous of settling the said annuity and the said securities and the said Mansion-houses and hereditaments so as aforesaid agreed to be settled by him for the purpose of supporting the dignity of the said Baronetcy, to the uses, upon the trusts and for the purposes hereinafter limited and declared, concerning the same respectively ;

and whereas it is expedient that the aforesaid purposes should be effected by an Act of the Council of the Governor General for making Laws and Regulations ;

It is hereby enacted as follows :—

1. This Act may be called the Cawasjee Jehangir Baronetcy Act, 1911. Short title.
2. Lionel Edward Pritchard, Esquire, the Accountant General of Bombay, Incorporation of
Edward Little Sale, Esquire, the Collector of Bombay, and Arthur Henry Trustees.

Southcote Aston, Esquire, the Chief Presidency Magistrate of Bombay, and their successors, the Accountant General of Bombay, the Collector of Bombay, and the Chief Presidency Magistrate of Bombay, all for the time being, shall be and they are hereby created a Corporation with perpetual succession and a common seal under the style and title of "The Trustees of the Sir Cowasjee Jehangir Baronetcy," and the said Lionel Edward Pritchard, Esquire, Edward Little Sale, Esquire, and Arthur Henry Southcote Aston, Esquire, and their said successors (hereinafter styled "the Corporation"), shall be and they are hereby constituted, as such Corporation, the Trustees for executing the powers and purposes of this Act.

Heirs of Sir Cowasjee Jehangir to take his name.

3. The heirs male of the body of Sir Cowasjee Jehangir to whom the said title and dignity shall descend, pursuant to the limitations of the Patent whereby the said dignity has been granted, shall take upon themselves respectively the names of "Cowasjee Jehangir" in lieu and in the place of any other name or names whatever; and such heirs male, severally and successively, shall be called by the names of "Cowasjee Jehangir" and by those names shall name, style and write themselves, respectively, upon all occasions whatever.

Vesting and application of income of settled property.

4. Immediately from and after the passing of this Act, the said annuity of fifty thousand rupees and securities, being promissory notes of the ¹[Central Government] or bonds of the Municipal Corporation of the City of Bombay, the Trustees of the Port of Bombay and the Trustees for the Improvement of the City of Bombay, of the nominal value of ten lakhs of rupees and producing a further annual income of about forty thousand rupees shall be assigned and transferred into the name of the Corporation, who shall hold the same upon the trusts and for the purposes hereinafter expressed concerning the same, (that is to say,) upon trust to continue to hold the said annuity and securities and as regards the said securities until such time as the same shall be discharged by the Secretary of State in Council of India or the Municipal Corporation of the City of Bombay or the Trustees of the Port of Bombay or the Trustees for the Improvement of the City of Bombay, as the case may be, or shall be sold by the said Trustees with the previous consent in writing of the person who shall for the time being be in the enjoyment of the income of the said securities and on such discharge or sale to invest the sum to be received on such occasion, with the like consent of the person for the time being in the enjoyment of the said income, in or on any stocks, funds or securities of, or the principal and interest of which is guaranteed by, the Government of the United Kingdom of Great Britain and Ireland or the ¹[Central Government] and in like manner, as often as the same shall become necessary, to alter, vary and change with like consent such stocks, funds and securities for others of the same or like nature; and upon further trust from time to time to pay and apply the said annuity of fifty thousand rupees and the dividends, interest and annual income of the said promissory notes, bonds, stocks, funds and securities unto and for the benefit of the said Sir Cowasjee Jehangir or the person who, as heir male of his body, shall for the time being have

¹ Subs. by the A. O. for "G. of I."

succeeded to, and be in the enjoyment of, the title of Baronet conferred by the said Letters Patent as aforesaid, notwithstanding any rule of law or equity to the contrary, and upon failure and in default of heirs male of the body of the said Sir Cawasjee Jehangir, to whom the same title and dignity of Baronet may descend, upon trust for the said Sir Cawasjee Jehangir, his executors, administrators and assigns, which ultimate remainder or reversion it shall be lawful for the said Sir Cawasjee Jehangir, his executors, administrators and assigns, at any time or times, during the continuance of the said title and dignity of Baronet, and until there shall be a failure of heirs male of the body of the said Sir Cawasjee Jehangir, to assign, transfer, bequeath and dispose of by deed or will or other assurance or assurances.

5. The Corporation during the minority of any person for the time being entitled to and in enjoyment of the said dignity of Baronet under the limitations of the said Letters Patent shall pay and apply for and towards the maintenance, education and benefit of such Baronet, in each and every year during such his minority as aforesaid, so much only of the annual interest, dividends and income of the said Trust Funds and premises as the Corporation shall in their discretion think proper, and shall from time to time invest the residue of the said annual interest, dividends and income of the said Trust Funds and premises in and upon stocks, funds and securities of, or the principal and interest of which is guaranteed by, the Government of the United Kingdom of Great Britain and Ireland or the ¹[Central Government], and shall upon such Baronet attaining his majority pay over, transfer and assign to him or as he shall direct and for his absolute benefit the said investments and all accumulations thereof.

Application
of income
during
minority.

6. The Mansion-houses and other hereditaments called respectively "Readymoney House" and "Fort Mansion" situate in the Island of Bombay, with their rights, members and appurtenances, of which the said Sir Cawasjee Jehangir is seised to him and his heirs, shall, by force of this Act, from and immediately after the passing thereof, stand limited unto and to the use of the Corporation upon the trusts hereinafter declared, that is to say, upon trust for the said Sir Cawasjee Jehangir for and during the term of his natural life and from and immediately after his decease upon trust for the heirs male of the body of the said Sir Cawasjee Jehangir who may succeed to the title of Baronet conferred by the said Letters Patent as aforesaid, and, upon failure and default of heirs male of the body of the said Sir Cawasjee Jehangir to whom the same title and dignity of Baronet may descend as aforesaid, upon trust for the said Sir Cawasjee Jehangir, his heirs and assigns for ever, which ultimate remainder or reversion it shall be lawful for the said Sir Cawasjee Jehangir and his heirs and assigns at any time or times during the continuance of the said title and dignity of Baronet, and until there shall be a failure of heirs male of the body of the said Sir Cawasjee Jehangir as aforesaid, to grant, convey, devise and dispose of by deed or will or by any other assurance or assurances by which such an estate in remainder or reversion is capable by law of being conveyed or disposed of by Parsee inhabitants of British India.

Mansion-
houses
limited to
the use of
the Baronet
for the
time being.

¹ Subs. by the A. O. for "G. of I."

Devolution
of interest
where bene-
ficiary
refuses,
neglects or
discontinues
to use the
names
"Cowasjee
Jehangir".

7. Provided always that in case any person to whom for the time being the said title of Baronet shall have descended shall, for the space of one whole year after he shall by virtue of this Act become entitled to the said annuity of fifty thousand rupees and the said dividends, interest and income of the said promissory notes, bonds, stocks, funds and securities, or to the possession or receipt of the rents and profits of the said hereditaments, or being then under age shall for the space of one whole year after he shall attain the age of twenty-one years, refuse or neglect to use the names of "Cowasjee Jehangir" as hereinbefore enacted, or in case any such person having so used those names shall, for the space of six calendar months consecutively during his natural life, discontinue so to use such names, then, in any or either of the said cases, the estate or interest in the said trust funds and premises of the person who shall so refuse or neglect to use or having used shall so discontinue to use the said names of "Cowasjee Jehangir" shall during the remainder of his respective natural life be suspended; and that, during any and every such suspension, the said annuity of fifty thousand rupees and the interest, dividends and income of the said promissory notes, bonds, stocks, funds and securities, and the possession and actual occupation, and also the rents and profits of the said hereditaments, shall devolve and belong to the person who would for the time being be entitled to succeed to the said title of Baronet next after the person so refusing or discontinuing to use the said name or in default of any such person to the person or persons who would be entitled to the same in case there had been a total failure of issue male of the said Sir Cowasjee Jehangir.

Power to
charge settled
property for
jointure of
widow.

8. It shall be lawful for the said Sir Cowasjee Jehangir and for any person to whom the said title of Baronet shall from time to time descend when in the actual enjoyment of the said title, and who shall not refuse, neglect or discontinue to use, for the respective periods hereinbefore in that behalf mentioned, the said names of "Cowasjee Jehangir" as hereinbefore enacted, either before or after his marriage with any woman or women by any deed or deeds, writing or writings, with or without power of revocation to be by him sealed and delivered in the presence of two or more credible witnesses (but subject and without prejudice to the annuity or annuities, if any, which shall be then subsisting and payable by virtue of any appointment made under and in pursuance of this present power), to limit and appoint unto any woman or women whom he shall marry for her or their life or lives, and for her or their jointure or jointures in bar of dower or other legal or customary rights any annuity or yearly sum not exceeding the sum of ten thousand rupees, clear of all taxes, charges and deductions whatsoever to commence and take effect immediately after the decease of the person limiting or appointing the same and to be issuing and payable out of the said annuity of fifty thousand rupees and the dividends, interest and annual income of the said promissory notes, bonds, stocks, funds and securities, and to be paid and payable by equal half-yearly payments on the thirtieth day of June and the thirty-first day of December, the first of the said half-yearly payments to be made on the half-yearly day which shall first happen after the decease of the person who shall have appointed such.

annuity or yearly income : Provided always that in case any person on whom such title shall descend shall have refused or neglected to use the names of "Cowasjee Jehangir" or shall discontinue to use such names for six calendar months consecutively during his natural life, every such limitation and appointment, either previously or afterwards made by him, shall be and become inoperative and invalid, and no such annuity thereby created or appointed shall take effect or be payable, or chargeable, on the said trust funds and premises, notwithstanding any such limitation or appointment.

9. Provided always that the said annuity of fifty thousand rupees and the interest, dividends and annual income of the said promissory notes, bonds, stocks, funds and securities shall not at one and the same time be subject to the payment of more than the yearly sum of twenty thousand rupees for or in respect of any jointure or jointures which shall be made in pursuance of the power hereinbefore contained, so that if by virtue of or under the same power the said annuity of fifty thousand rupees and interest, dividends and annual income would, in case this present provision had not been inserted, be charged at any one time with a greater yearly sum for jointures in the whole than the yearly sum of twenty thousand rupees, the yearly sum which shall occasion such excess or such part thereof as shall occasion the same shall during the time of such excess abate and not be payable.

Limitation
to amount of
jointure.

10. The said Mansion-houses and hereditaments called respectively "Readymoney House" and "Fort Mansion," with their rights, members and appurtenances, shall not be subject to any right, inheritance or estate whatsoever which the wife of the said Sir Cowasjee Jehangir, or the wives of any of the persons who shall successively become entitled thereto, may or might have or claim to have in the said Mansion-houses and hereditaments under any custom or law of the Parsees, or otherwise howsoever.

Exclusion of
wives from
interest in
Mansion-
houses.

11. Save as regards the ultimate remainders or reversions, hereinbefore limited in trust for the said Sir Cowasjee Jehangir, his heirs, executors, administrators and assigns respectively, so long as the said title and dignity of Baronet shall endure, and until there shall be a failure of heirs male of the body of the said Sir Cowasjee Jehangir, to whom the said title and dignity of Baronet might descend pursuant to the limitations of the Patent whereby the said dignity was granted, neither the said Sir Cowasjee Jehangir nor any of the heirs male of his body in whose favour trusts are hereinbefore declared of the said annuity of fifty thousand rupees and the interest, dividends and annual income of the said promissory notes, bonds, stocks, funds and securities or of the said Mansion-houses and hereditaments called respectively "Readymoney House" and "Fort Mansion," shall transfer, dispose of, alien, convey, charge or encumber the said trust funds and premises or any part thereof, or the interest, dividends and annual income thereof, or any part thereof, or the said Mansion-houses or hereditaments, or any part thereof for any greater or larger estate, interest or time than during his natural life, and for such portion thereof only as he shall continue to use the names of "Cowasjee Jehangir," nor shall any such person as aforesaid either alone or jointly with any other or others of them or with any other person or persons whomsoever

Limitation of
transfers to
life of
transferor.

have any power to discontinue or bar the estates tail hereinbefore limited in trust for the heirs male of the body of the said Sir Cawasjee Jehangir, or any estate or interest hereby or herein created or declared in trust or for the benefit of any person or persons for whose benefit trusts are declared by this Act of the said annuity of fifty thousand rupees and the interest, dividends and annual income of the said promissory notes, bonds, stocks, funds and securities, or of the said Mansion-houses, hereditaments and the rents and profits thereof, or to prevent any such person or persons from succeeding to, holding or enjoying, receiving or taking the same premises according to the true intent of the provisions hereinbefore contained, nor shall the same premises or any of them be held by any Court of law or equity to have vested in any such person as aforesaid for any greater estate or interest than during his life, and only during such portion thereof as he shall continue to use the names of "Cawasjee Jehangir," and every attempt to make any conveyance, assignment or assurance contrary to the intention of this Act shall be, and is hereby, declared and enacted to be void.

Addition of
stocks, funds
or securities
to settled
property.

12. If at any time or times hereafter the said Sir Cawasjee Jehangir or any other person or persons shall be desirous of augmenting the funds and securities for the time being subject to the trusts of this Act, and for that purpose and with that intent shall at his or her own expense transfer and deliver to the Corporation any stocks, funds or securities of, or the principal and interest of which is guaranteed by, the Government of the United Kingdom of Great Britain and Ireland or the ¹[Central Government], then and as often as the same shall happen the said Corporation may, with the previous consent of the ²[Provincial Government of Bombay], accept such stocks, funds and securities, and the same shall thenceforth be held by the said Corporation upon the same trusts as are declared by this Act with regard to the said trust funds and premises or upon such of them as shall then be subsisting and capable of taking effect : Provided always that the total amount of the promissory notes, bonds, stocks, funds and securities for the time being subject to the trusts of this Act, shall at no time exceed fifty lakhs of rupees.

Insurance of
Mansion-
houses and
application
of money
received in
respect of
insurance.

13. The said Mansion-houses called respectively "Readymoney House" and "Fort Mansion", and all the out-buildings and offices thereof, and also all other messuages or buildings, which may from time to time be added thereto, or substituted therefor, or which may hereafter become subject to any of the trusts of this Act, shall be kept insured in the name of the said Corporation, or of the persons for the time being constituting the same against loss or damage by fire, in such sum as the Corporation may deem adequate by, and at the expense of, the person for the time being in the enjoyment of the said title of Baronet, and in case any such person shall at any time neglect or refuse to insure the same in such amount, it shall be lawful for the Corporation to get the same insured, and to apply any portion of the income of the funds for the time being subject to the trusts of this Act to that purpose, and in case

¹ Subs. by the A. O. for "G. of I."

² Subs. by the A. O. for "Governor of Bombay in Council".

the hereditaments and premises so insured, or any part thereof, shall be destroyed or damaged by fire, the moneys received in respect of such insurance shall either be laid out under the direction of the said Corporation in re-building or reinstating the hereditaments and premises so destroyed or damaged by fire, or, upon the application of the person for the time being entitled to, and in the enjoyment of, the said dignity of Baronet, and with the consent of the ¹[Provincial Government of Bombay], to be notified by a resolution of the Government of Bombay, may be laid out in the purchase of other hereditaments in the Presidency of Bombay, suitable for the support of the dignity of the said title, in which last-mentioned case the hereditaments so purchased shall immediately from and after the completion of the purchase thereof be and become subject to the uses and trusts of this Act, or such of them as shall then be subsisting, and capable of taking effect in the same manner, and to the same effect, as if such last-mentioned hereditaments had expressly been named or described in section 6. Until such insurance moneys shall have been so laid out, the Corporation may invest the same, or any part thereof, in any of the securities specified in section 17.

14. The said Mansion-houses and premises called respectively "Ready-money House" and "Fort Mansion", and all additions thereto, and also all other messuages and hereditaments which from time to time may be or become subject to the trusts declared by this Act concerning the said Mansion-houses and premises, shall be kept in good repair, order and condition by and at the expense of the person for the time being in the enjoyment of the title of Baronet conferred by the said Letters Patent, and in case any such person shall at any time neglect or refuse to keep the said Mansion-houses, hereditaments and premises or any of them in such good order and condition, it shall be lawful for the Corporation to keep or cause the same to be kept in good order and condition and to defray the expense incident thereto from the income of the funds for the time being subject to the provisions of this Act.

15. The Corporation shall hold the said Mansion-houses and hereditaments known respectively as "Readymoney House" and "Fort Mansion," and also any other hereditaments for the time being vested in them by virtue of this Act, upon trust with the consent of the person entitled to and in the actual enjoyment of the title of Baronet conferred by the said Letters Patent, and with the consent of the ¹[Provincial Government of Bombay] to be notified as aforesaid, to sell or exchange for other lands or hereditaments in the Presidency of Bombay the said Mansion-houses and hereditaments, and also any other such hereditaments as aforesaid, and upon any such exchange to give or receive any money for equality of exchange.

16. And it is hereby declared that any such sale as aforesaid may be made either by public auction or private contract, and that the corporation may make any stipulations as to title or evidence or commencement of title or otherwise in any conditions of sale or contract for sale or exchange of the said hereditaments or any part thereof, and may buy in or rescind or vary any contract

¹ Subs. by the A. O. for "Governor of Bombay in Council".

for sale or exchange and re-sell or re-exchange without being responsible for any loss occasioned thereby.

Investment
of moneys
received on
such sale
or exchange.

17. And it is hereby declared that the said Corporation shall receive all moneys which may become payable upon any such sale or exchange as aforesaid, and with all convenient speed invest the same either in the purchase of any stocks, funds or securities of, or the principal and interest of which is guaranteed by, the Government of the United Kingdom of Great Britain and Ireland or the ¹[Central Government] or in the purchase of other lands or hereditaments situate in the Presidency of Bombay and suitable for the support of the dignity of the said title : Provided that every such purchase of lands or hereditaments be made with the consent in writing of the person then entitled to and in the actual enjoyment of the said title.

Investments
and lands
resulting
from such
sale or
exchange to
be held on
trusts
declared by
this Act.

Reimburse-
ment of
expenses of
Corporation.

18. And it is hereby declared that the stocks, funds and securities and the lands or hereditaments, respectively, so to be purchased or taken in exchange as aforesaid shall from and immediately after the completion of the purchase or exchange thereof, respectively, be held upon the trusts in and by this Act declared of and concerning the said trust funds and the said Mansion-houses and premises respectively, or such of them, respectively, as may then be subsisting and capable of taking effect.

19. It shall be lawful for the Corporation out of the money which shall come to their hands by virtue of the trusts and provisions of this Act to retain and reimburse themselves all costs, damages and expenses which they shall or may sustain, expend or disburse in or about the execution of the aforesaid powers, trusts and provisions, or in relation thereto.

Saving of
existing
rights.

20. Saving always to the King's most Excellent Majesty, His heirs and successors, and to all and every other person and persons, bodies politic and corporate, and his, her and their respective heirs, successors, executors and administrators and every of them (other than and except the said Sir Cowasjee Jehangir, his devisees, heirs and assigns), all such estate, right, title, interest, claim and demand whatsoever of, into, out of or upon the said Mansion-houses and hereditaments called respectively "Readymoney House" and "Fort Mansion," or any part or parts thereof, as they, every or any of them, had before the passing of this Act and would, could or might have had, held or enjoyed in case this Act had not been passed.

THE CO-OPERATIVE SOCIETIES ACT, 1912.

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¹ Subs. by the A. O. for "G. of I."

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ACT NO. II OF 1912.¹

[1st March, 1912.]

An Act to amend the Law relating to Co-operative Societies.

WHEREAS it is expedient further to facilitate the formation of Co-operative Societies for the promotion of thrift and self-help among agriculturists, artisans and persons of limited means, and for that purpose to amend the law relating to Co-operative Societies ; It is hereby enacted as follows :—

Preliminary.

Short title
and extent.

- 1. (1) This Act may be called the Co-operative Societies Act, 1912 ; and
- (2) It extends to the whole of British India.

¹ For Statement of Objects and Reasons, see Gazette of India, 1911, Pt. V, p. 95 ; for Report of Select Committee, see *ibid.*, 1912, Pt. V, p. 7 ; and for Proceedings in Council, see *ibid.*, 1911, Pt. VI, pp. 186, 679, and *ibid.*, 1912, Pt. VI, pp. 3, 31 and 256.

This Act has been declared to be in force in the Sonthal Parganas by notification under s. 3 of the Sonthal Parganas Settlement Regulation (3 of 1872), see B. and O. Gazette, 1913, Pt. II, p. 105 ; and in British Baluchistan by the British Baluchistan Laws Regulation, 1913 (2 of 1913), s. 3.

It has been repealed in its application to—

- (1) the Bombay Presidency by the Bombay Co-operative Societies Act, 1925 (Bom. 7 of 1925) ;
- (2) the Madras Presidency by the Madras Co-operative Societies Act, 1932 (Mad. 6 of 1932) ;
- (3) Bihar and Orissa by the B. and O. Co-operative Societies Act, 1935 (B. and O. 6 of 1935) ; and
- (4) Orissa, separately, by the Orissa Laws Regulation, 1936 (1 of 1936).

(Preliminary. Registration.)

2. In this Act, unless there is anything repugnant in the subject or con- Definitions.
text,—

- (a) "by-laws" means the registered by-laws for the time being in force, and includes a registered amendment of the by-laws :
- (b) "committee" means the governing body of a registered society to whom the management of its affairs is entrusted :
- (c) "member" includes a person joining in the application for the registration of a society and a person admitted to membership after registration in accordance with the by-laws and any rules :
- (d) "officer" includes a chairman, secretary, treasurer, member of committee, or other person empowered under the rules or the by-laws to give directions in regard to the business of the society :
- (e) "registered society" means a society registered or deemed to be registered under this Act :
- (f) "Registrar" means a person appointed to perform the duties of a Registrar of Co-operative Societies under this Act : and
- (g) "rules" means rules made under this Act.

Registration.

3. The ¹[Provincial Government] may appoint a person to be Registrar of Co-operative Societies for the Province or any portion of it, and may appoint persons to assist such Registrar, and may, by general or special order, confer on any such persons all or any of the powers of a Registrar under this Act. ^{The Registrar.}

4. Subject to the provisions hereinafter contained, a society which has as its object the promotion of the economic interests of its members in accordance with co-operative principles, or a society established with the object of facilitating the operations of such a society, may be registered under this Act with or without limited liability : ^{Societies which may be registered.}

Provided that unless the ¹[Provincial Government] by general or special order otherwise directs—

- (1) the liability of a society of which a member is a registered society shall be limited ;
- (2) the liability of a society of which the object is the creation of funds to be lent to its members, and of which the majority of the members are agriculturists, and of which no member is a registered society, shall be unlimited.

¹ Subs. by the A. O. for "L. G."

(Registration.)

Restrictions
on interest
of member
of society
with limited
liability and
a share
capital.

5. Where the liability of the members of a society is limited by shares, no member other than a registered society shall—

- (a) hold more than such portion of the share capital of the society, subject to a maximum of one-fifth, as may be prescribed by the rules ; or
- (b) have or claim any interest in the shares of the society exceeding one thousand rupees.

Conditions
of registra-
tion.

6. (1) No society, other than a society of which a member is a registered society, shall be registered under this Act which does not consist of at least ten persons above the age of eighteen years and, where the object of the society is the creation of funds to be lent to its members, unless such persons—

- (a) reside in the same town or village or in the same group of villages ;
or,
- (b) save where the Registrar otherwise directs, are members of the same tribe, class, caste or occupation.

(2) The word “ limited ” shall be the last word in the name of every society with limited liability registered under this Act.

Power of
Registrar to
decide certain
questions.

7. When any question arises whether for the purposes of this Act a person is an agriculturist or a non-agriculturist, or whether any person is a resident in a town or village or group of villages, or whether two or more villages shall be considered to form a group, or whether any person belongs to any particular tribe, class, caste or occupation, the question shall be decided by the Registrar, whose decision shall be final.

Application
for registra-
tion.

8. (1) For purposes of registration an application to register shall be made to the Registrar.

(2) The application shall be signed—

- (a) in the case of a society of which no member is a registered society, by at least ten persons qualified in accordance with the requirements of section 6, sub-section (1) ; and
- (b) in the case of a society of which a member is a registered society, by a duly authorised person on behalf of every such registered society, and where all the members of the society are not registered societies, by ten other members or, when there are less than ten other members, by all of them.

(3) The application shall be accompanied by a copy of the proposed by-laws of the society, and the persons by whom or on whose behalf such application is made shall furnish such information in regard to the society as the Registrar may require.

Registration.

9. If the Registrar is satisfied that a society has complied with the provisions of this Act and the rules and that its proposed by-laws are not contrary to the Act or to the rules, he may, if he thinks fit, register the society and its by-laws.

(Registration. Rights and liabilities of members. Duties of registered societies.)

10. A certificate of registration signed by the Registrar shall be conclusive evidence that the society therein mentioned is duly registered unless it is proved that the registration of the society has been cancelled. Evidence of registration.

11. (1) No amendment of the by-laws of a registered society shall be valid until the same has been registered under this Act, for which purpose a copy of the amendment shall be forwarded to the Registrar. Amendment of the by-laws of a registered society.

(2) If the Registrar is satisfied that any amendment of the by-laws is not contrary to this Act or to the rules, he may, if he thinks fit, register the amendment.

(3) When the Registrar registers an amendment of the by-laws of a registered society, he shall issue to the society a copy of the amendment certified by him, which shall be conclusive evidence that the same is duly registered.

Rights and liabilities of members.

12. No member of a registered society shall exercise the rights of a member unless or until he has made such payment to the society in respect of membership or acquired such interest in the society, as may be prescribed by the rules or by-laws. Member not to exercise rights till due payment made.

13. (1) Where the liability of the members of a registered society is not limited by shares, each member shall, notwithstanding the amount of his interest in the capital, have one vote only as a member in the affairs of the society. Votes of members.

(2) Where the liability of the members of a registered society is limited by shares, each member shall have as many votes as may be prescribed by the by-laws.

(3) A registered society which has invested any part of its funds in the shares of any other registered society may appoint as its proxy, for the purpose of voting in the affairs of such other registered society, any one of its members.

14. (1) The transfer or charge of the share or interest of a member in the capital of a registered society shall be subject to such conditions as to maximum holding as may be prescribed by this Act or by the rules. Restrictions on transfer of share or interest.

(2) In case of a society registered with unlimited liability a member shall not transfer any share held by him or his interest in the capital of the society or any part thereof unless—

- (a) he has held such share or interest for not less than one year ; and
- (b) the transfer or charge is made to the society or to a member of the society.

Duties of registered societies.

15. Every registered society shall have an address, registered in accordance with the rules, to which all notices and communications may be sent, and shall send to the Registrar notice of every change thereof. Address of societies.

(Duties of registered societies. Privileges of registered societies.)

Copy of Act,
rules and
by-laws to
be open to
inspection.
Audit.

16. Every registered society shall keep a copy of this Act and of the rules governing such society, and of its by-laws, open to inspection free of charge at all reasonable times at the registered address of the society.

17. (1) The Registrar shall audit or cause to be audited by some person authorised by him by general or special order in writing in this behalf the accounts of every registered society once at least in every year.

(2) The audit under sub-section (1) shall include an examination of overdue debts, if any, and a valuation of the assets and liabilities of the society.

(3) The Registrar, the Collector or any person authorised by general or special order in writing in this behalf by the Registrar shall at all times have access to all the books, accounts, papers and securities of a society, and every officer of the society shall furnish such information in regard to the transactions and working of the society as the person making such inspection may require.

Privileges of registered societies.

Societies to
be bodies
corporate.

18. The registration of a society shall render it a body corporate by the name under which it is registered, with perpetual succession and a common seal, and with power to hold property, to enter into contracts, to institute and defend suits and other legal proceedings and to do all things necessary for the purposes of its constitution.

Prior claim
of society.

19. Subject to any prior claim of the ¹[Crown] in respect of land-revenue or any money recoverable as land-revenue or of a landlord in respect of rent or any money recoverable as rent, a registered society shall be entitled in priority to other creditors to enforce any outstanding demand due to the society from a member or past member—

(a) in respect of the supply of seed or manure or of the loan of money for the purchase of seed or manure—upon the crops or other agricultural produce of such member or person at any time within eighteen months from the date of such supply or loan ;

(b) in respect of the supply of cattle, fodder for cattle, agricultural or industrial implements or machinery, or raw materials for manufacture, or of the loan of money for the purchase of any of the foregoing things—upon any such things so supplied, or purchased in whole or in part from any such loan, or on any articles manufactured from raw materials so supplied or purchased.

Charge and
set-off in
respect of
shares or
interest of
member.

20. A registered society shall have a charge upon the share or interest in the capital and on the deposits of a member or past member and upon any dividend, bonus or profits payable to a member or past member in respect of any debt due from such member or past member to the society, and may set off any sum credited or payable to a member or past member in or towards payment of any such debt. .

¹ Subs. by the A. O. for " Govt. ".

(Privileges of registered societies.)

III of 1909.
III of 1907.

21. Subject to the provisions of section 20, the share or interest of a member in the capital of a registered society shall not be liable to attachment or sale under any decree or order of a Court of Justice in respect of any debt or liability incurred by such member, and neither the Official Assignee under the Presidency-towns Insolvency Act, 1909, nor a Receiver under the ¹Provincial Insolvency Act, 1907, shall be entitled to or have any claim on such share or interest. Shares or interest not liable to attachment.

22. (1) On the death of a member a registered society may transfer the share or interest of the deceased member to the person nominated in accordance with the rules made in this behalf, or, if there is no person so nominated, to such person as may appear to the committee to be the heir or legal representative of the deceased member, or pay to such nominee, heir or legal representative, as the case may be, a sum representing the value of such member's share or interest, as ascertained in accordance with the rules or by-laws : Transfer of interest on death of member.

Provided that—

- (i) in the case of a society with unlimited liability, such nominee, heir or legal representative, as the case may be, may require payment by the society of the value of the share or interest of the deceased member ascertained as aforesaid ;
- (ii) in the case of a society with limited liability, the society shall transfer the share or interest of the deceased member to such nominee, heir or legal representative, as the case may be, being qualified in accordance with the rules and by-laws for membership of the society, or on his application within one month of the death of the deceased member to any person specified in the application who is so qualified.

(2) A registered society may pay all other moneys due to the deceased member from the society to such nominee, heir or legal representative, as the case may be.

(3) All transfers and payments made by a registered society in accordance with the provisions of this section shall be valid and effectual against any demand made upon the society by any other person.

23. The liability of a past member for the debts of a registered society as they existed at the time when he ceased to be a member shall continue for a period of two years from the date of his ceasing to be a member. Liability of past member.

24. The estate of a deceased member shall be liable for a period of one year from the time of his decease for the debts of a registered society as they existed at the time of his decease. Liability of the estates of deceased member.

¹ See now the Provincial Insolvency Act, 1920 (5 of 1920).

(Privileges of registered societies.)

Register of members.

25. Any register or list of members or shares kept by any registered society shall be *primâ facie* evidence of any of the following particulars entered therein :—

- (a) the date at which the name of any person was entered in such register or list as a member ;
- (b) the date at which any such person ceased to be a member.

Proof of entries in societies' books.

26. A copy of any entry in a book of a registered society regularly kept in the course of business, shall, if certified in such manner as may be prescribed by the rules, be received, in any suit or legal proceeding, as *primâ facie* evidence of the existence of such entry, and shall be admitted as evidence of the matters, transactions and accounts therein recorded in every case where, and to the same extent as, the original entry itself is admissible.

Exemption from compulsory registration of instruments relating to shares and debentures of registered society.

27. Nothing in section 17, sub-section (1), clauses (b) and (c), of the Indian Registration Act, 1908, shall apply to—

XVI of 1908.

- (1) any instrument relating to shares in a registered society, notwithstanding that the assets of such society consist in whole or in part of immoveable property ; or
- (2) any debenture issued by any such society and not creating, declaring, assigning, limiting or extinguishing any right, title or interest to or in immoveable property except in so far as it entitles the holder to the security afforded by a registered instrument whereby the society has mortgaged, conveyed or otherwise transferred the whole or part of its immoveable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures ; or
- (3) any endorsement upon or transfer of any debenture issued by any such society.

Power to exempt from income-tax, stamp-duty and registration-fees.

¹[28. (1)] The ²[Central Government], by notification³ in the ⁴[Official Gazette], may, in the case of any registered society or class of registered society, remit⁵* the income-tax payable in respect of the profits of the society, or of the dividends or other payments received by the members of the society on account of profits ;

6* * * * *

¹ The original s. 28 was re-numbered as sub-section (1) of that section by the Devolution Act, 1920 (38 of 1920), s. 2 and Sch. I.

² Subs. by the A. O. for " G. G. in C. ".

³ For notifications under this section, see Gen. R. and O., Vol. IV, pp. 340-341.

⁴ Subs. by the A. O. for " Gazette of India ".

⁵ The letter and brackets "(a)" rep. by Act 38 of 1920, s. 2 and Sch. I.

* Clauses (b) and (c) rep. by s. 2 and Sch. I, *ibid.*

(Privileges of registered societies. Property and funds of registered societies.)

¹[(2) The ²[Government], by notification in the ³[Official Gazette], may, in the case of any registered society or class of registered society, remit—

(a) the stamp-duty with which, under any law for the time being in force, instruments executed by or on behalf of a registered society or by an officer or member and relating to the business of such society, or any class of such instruments, are respectively chargeable, and

(b) any fee payable under the law of registration for the time being in force.]

⁴[In this sub-section "Government" in relation to stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, proxies and receipts, and in relation to any stamp-duty falling within Item 59 in List I in the Seventh Schedule to the Government of India Act, 1935, means the Central Government, and save as aforesaid means the Provincial Government.]

Property and funds of registered societies.

29. (1) A registered society shall not make a loan to any person other than a member : Restrictions on loans.

Provided that, with the general or special sanction of the Registrar, a registered society may make loans to another registered society.

(2) Save with the sanction of the Registrar, a society with unlimited liability shall not lend money on the security of moveable property.

(3) The ²[Provincial Government] may, by general or special order, prohibit or restrict the lending of money on mortgage of immoveable property by any registered society or class of registered societies.

30. A registered society shall receive deposits and loans from persons who are not members only to such extent and under such conditions as may be prescribed by the rules or by-laws. Restrictions on borrowing.

31. Save as provided in sections 29 and 30, the transactions of a registered society with persons other than members shall be subject to such prohibitions and restrictions, if any, as the ²[Provincial Government] may, by rules, prescribe. Restrictions on other transactions with non-members.

32. (1) A registered society may invest or deposit its funds—

(a) in the Government Savings Bank, or

(b) in any of the securities specified in section 20 of the Indian Trusts Act, 1882, or

Investment of funds.

¹ Ins. by the Devolution Act, 1920 (38 of 1920), s. 2 and Sch. I.

² Subs. by the A. O. for "L. G."

³ Subs. by the A. O. for "local official Gazette".

⁴ Ins. by the A. O.

(Property and funds of registered societies. Inspection of affairs.)

- (c) in the shares or on the security of any other registered society, or
- (d) with any bank or person carrying on the business of banking approved for this purpose by the Registrar, or
- (e) in any other mode permitted by the rules.

(2) Any investments or deposits made before the commencement of this Act which would have been valid if this Act had been in force are hereby ratified and confirmed.

Funds not to be divided by way of profit.

33. No part of the funds of a registered society shall be divided by way of bonus or dividend or otherwise among its members :

Provided that after at least one-fourth of the net profits in any year have been carried to a reserve fund, payments from the remainder of such profits and from any profits of past years available for distribution may be made among the members to such extent and under such conditions as may be prescribed by the rules or by-laws :

Provided also that in the case of a society with unlimited liability no distribution of profits shall be made without the general or special order of the ¹[Provincial Government] in this behalf.

Contribution to charitable purpose.

34. Any registered society may, with the sanction of the Registrar, after one-fourth of the net profits in any year has been carried to a reserve fund, contribute an amount not exceeding ten per cent. of the remaining net profits to any charitable purpose, as defined in section 2 of the Charitable Endowments Act, 1890. VI of 1890.

Inspection of affairs.

Inquiry by Registrar.

35. (1) The Registrar may of his own motion, and shall on the request of the Collector, or on the application of a majority of the committee, or of not less than one-third of the members, hold an inquiry or direct some person authorised by him by order in writing in this behalf to hold an inquiry into the constitution, working and financial condition of a registered society.

(2) All officers and members of the society shall furnish such information in regard to the affairs of the society as the Registrar or the person authorised by the Registrar may require.

Inspection of books of indebted society.

36. (1) The Registrar shall, on the application of a creditor of a registered society, inspect or direct some person authorised by him by order in writing in this behalf to inspect the books of the society :

Provided that—

- (a) the applicant satisfies the Registrar that the debt is a sum then due, and that he has demanded payment thereof and has not received satisfaction within a reasonable time ; and
- (b) the applicant deposits with the Registrar such sum as security for the costs of the proposed inspection as the Registrar may require.

¹ Subs. by the A. O. for " L. G. "

(Inspection of affairs. Dissolution of society.)

(2) The Registrar shall communicate the results of any such inspection to the creditor.

37. Where an inquiry is held under section 35, or an inspection is made under section 36, the Registrar may apportion the costs, or such part of the costs as he may think right, between the society, the members or creditor demanding an inquiry or inspection, and the officers or former officers of the society. Costs of inquiry.

38. Any sum awarded by way of costs under section 37 may be recovered, on application to a Magistrate having jurisdiction in the place where the person from whom the money is claimable actually and voluntarily resides or carries on business, by the distress and sale of any moveable property within the limits of the jurisdiction of such Magistrate belonging to such person. Recovery of costs.

Dissolution of society.

39. (1) If the Registrar, after an inquiry has been held under section 35 or after an inspection has been made under section 36 or on receipt of an application made by three-fourths of the members of a registered society, is of opinion that the society ought to be dissolved, he may cancel the registration of the society. Dissolution.

(2) Any member of a society may, within two months from the date of an order made under sub-section (1), appeal from such order.

(3) Where no appeal is presented within two months from the making of an order cancelling the registration of a society, the order shall take effect on the expiry of that period.

(4) Where an appeal is presented within two months, the order shall not take effect until it is confirmed by the appellate authority.

(5) The authority to which appeals under this section shall lie shall be the ¹[Provincial Government]:

Provided that the ¹[Provincial Government] may, by notification in the ²[Official Gazette], direct that appeals shall lie to such Revenue-authority as may be specified in the notification.

40. Where it is a condition of the registration of a society that it should consist of at least ten members, the Registrar may, by order in writing, cancel the registration of the society if at any time it is proved to his satisfaction that the number of the members has been reduced to less than ten. Cancellation of registration of society.

41. Where the registration of a society is cancelled, the society shall cease to exist as a corporate body— Effect of cancellation of registration.

- (a) in the case of cancellation in accordance with the provisions of section 39, from the date the order of cancellation takes effect;
- (b) in the case of cancellation in accordance with the provisions of section 40, from the date of the order.

¹ Subs. by the A. O. for "L. G."

² Subs. by the A. O. for "local official Gazette".

(Dissolution of society.)

Winding up. 42. (1) Where the registration of a society is cancelled under section 39 or section 40, the Registrar may appoint a competent person to be liquidator of the society.

(2) A liquidator appointed under sub-section (1) shall have power—

- (a) to institute and defend suits and other legal proceedings on behalf of the society by his name of office ;
- (b) to determine the contribution to be made by the members and past members of the society respectively to the assets of the society ;
- (c) to investigate all claims against the society and, subject to the provisions of this Act, to decide questions of priority arising between claimants ;
- (d) to determine by what persons and in what proportions the costs of the liquidation are to be borne ; and
- (e) to give such directions in regard to the collection and distribution of the assets of the society, as may appear to him to be necessary for winding up the affairs of the society.

(3) Subject to any rules, a liquidator appointed under this section shall, in so far as such powers are necessary for carrying out the purposes of this section, have power to summon and enforce the attendance of witnesses and to compel the production of documents by the same means and (so far as may be) in the same manner as is provided in the case of a Civil Court under the Code of Civil Procedure, 1908.¹

V of 1908.

(4) Where an appeal from any order made by a liquidator under this section is provided for by the rules, it shall lie to the Court of the District Judge.²

³(5) Orders made under this section shall, on application, be enforced as follows :—

- (a) when made by a liquidator, by any Civil Court having local jurisdiction in the same manner as a decree of such Court ;
- (b) when made by the Court of the District Judge on appeal, in the same manner as a decree of such Court made in any suit pending therein.

(6) Save in so far as is hereinbefore expressly provided, no Civil Court shall have any jurisdiction in respect of any matter connected with the dissolution of a registered society under this Act.⁴

¹ In its application to British Baluchistan this sub-section shall be read as if the words " or the British Baluchistan Civil Justice Regulation, 1896, as the case may be " were ins. at the end : see the British Baluchistan Laws Regulation, 1913 (2 of 1913), Sch. I.

² For sub-section (4A) which applies to the U. P., see the Co-operative Societies (Amendment) Act, 1919 (U. P. 3 of 1919).

³ This sub-section has been modified in its application to the U. P., see *ibid.*

⁴ For s. 42A ins. in the C. P., see the Co-operative Societies (C. P. Amendment) Act, 1930 (C. P. 7 of 1930), s. 2.

(Rules.)

Rules.

43. (1) The ¹[Provincial Government] may, for the whole or any part of Rules. the Province and for any registered society or class of such societies, make rules² to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may—

- (a) subject to the provisions of section 5, prescribe the maximum number of shares or portion of the capital of a society which may be held by a member ;
- (b) prescribe the forms to be used and the conditions to be complied with in the making of applications for the registration of a society and the procedure in the matter of such applications ;
- (c) prescribe the matters in respect of which a society may or shall make by-laws and for the procedure to be followed in making, altering and abrogating by-laws, and the conditions to be satisfied prior to such making, alteration or abrogation ;
- (d) prescribe the conditions to be complied with by persons applying for admission or admitted as members, and provide for the election and admission of members, and the payment to be made and the interest to be acquired before the exercise of the right of membership ;
- (e) regulate the manner in which funds may be raised by means of shares or debentures or otherwise ;
- (f) provide for general meetings of the members and for the procedure at such meetings and the powers to be exercised by such meetings ;
- (g) provide for the appointment, suspension and removal of the members of the committee and other officers, and for the procedure at meetings of the committee, and for the powers to be exercised and the duties to be performed by the committee and other officers ;
- (h) prescribe the accounts and books to be kept by a society and provide for the audit of such accounts and the charges, if any, to be made for such audit, and for the periodical publication of a balance-sheet showing the assets and liabilities of a society ;
- (i) prescribe the returns to be submitted by a society to the Registrar and provide for the persons by whom and the form in which such returns shall be submitted ;
- (j) provide for the persons by whom and the form in which copies of entries in books of societies may be certified ;

¹ Subs. by the A. O. for " L. G. ".

² For rules, see different local Rules and Orders.

(Rules.)

- (k) provide for the formation and maintenance of a register of members and, where the liability of the members is limited by shares, of a register of shares ;
 - (l) provide that any dispute touching the business of a society between members or past members of the society or persons claiming through a member or past member or between a member or past member or persons so claiming and the committee or any officer shall be referred to the Registrar for decision or, if he so directs, to arbitration, and prescribe the mode of appointing an arbitrator or arbitrators and the procedure to be followed in proceedings before the Registrar or such arbitrator or arbitrators, and the enforcement of the decisions of the Registrar or the awards of arbitrators ;
 - (m) provide for the withdrawal and expulsion of members and for the payments, if any, to be made to members who withdraw or are expelled and for the liabilities of past members ;
 - (n) provide for the mode in which the value of a deceased member's interest shall be ascertained, and for the nomination of a person to whom such interest may be paid or transferred ;
 - (o) prescribe the payments to be made and the conditions to be complied with by members applying for loans, the period for which loans may be made, and the amount which may be lent, to an individual member ;
 - (p) provide for the formation and maintenance of reserve funds, and the objects to which such funds may be applied, and for the investment of any funds under the control of the society ;
 - (q) prescribe the extent to which a society may limit the number of its members ;
 - (r) prescribe the conditions under which profits may be distributed to the members of a society with unlimited liability and the maximum rate of dividend which may be paid by societies ;
 - (s) subject to the provisions of section 39, determine in what cases an appeal shall lie from the orders of the Registrar, and prescribe the procedure to be followed in presenting and disposing of such appeals ; and
 - (t) prescribe the procedure to be followed by a liquidator appointed under section 42, and the cases in which an appeal shall lie from the order of such liquidator.
- (3) The ¹[Provincial Government] may delegate, subject to such conditions, if any, as it thinks fit, all or any of its powers to make rules under this section to any authority specified in the order of delegation.
- (4) The power to make rules conferred by this section is subject to the condition of the rules being made after previous publication.

¹ Subs. by the A. O. for "L. G.".

(Rules. Miscellaneous.)

(5) All rules made under this section shall be published in the ²[Official Gazette], and on such publication shall have effect as if enacted in this Act.

Miscellaneous.

44. (1) All sums due from a registered society or from an officer or member or past member of a registered society as such to the Government, including any costs awarded to the Government under section 37, may be recovered in the same manner as arrears of land-revenue. Recovery of sums due to Government.

(2) Sums due from a registered society to Government and recoverable under sub-section (1) may be recovered, firstly, from the property of the society ; secondly, in the case of a society of which the liability of the members is limited, from the members subject to the limit of their liability ; and, thirdly in the case of other societies, from the members.

45. Notwithstanding anything contained in this Act, the ¹[Provincial Government] may, by special order in each case and subject to such conditions, if any, as it may impose, exempt any society from any of the requirements of this Act as to registration. Power to exempt societies from conditions as to registration.

46. The ¹[Provincial Government] may, by general or special order, exempt any registered society from any of the provisions of this Act or may direct that such provisions shall apply to such society with such modifications as may be specified in the order. Power to exempt registered societies from provisions of the Act.

47. (1) No person other than a registered society shall trade or carry on business under any name or title of which the word " co-operative " is part without the sanction of the ¹[Provincial Government] : Prohibition of the use of the word " co-operative ".

Provided that nothing in this section shall apply to the use by any person or his successor in interest of any name or title under which he traded or carried on business at the date on which this Act comes into operation.

(2) Whoever contravenes the provisions of this section shall be punishable with fine which may extend to fifty rupees, and in the case of a continuing offence with further fine of five rupees for each day on which the offence is continued after conviction therefor.

VI of 1882. 48. The provisions of the ³Indian Companies Act, 1882, shall not apply to registered societies. Indian Companies Act, 1882, not to apply.

X of 1904. 49. Every society now existing which has been registered under the Co-operative Credit Societies Act, 1904, shall be deemed to be registered under this Act, and its by-laws shall, so far as the same are not inconsistent with the express provisions of this Act, continue in force until altered or rescinded. Saving of existing societies.

50.[Repeal.] *Rep. by the Second Repealing and Amending Act, 1914 (XVII of 1914), s. 3 and Sch. II.*

¹ Subs. by the A. O. for " L. G. ".

² Subs. by the A. O. for " local official Gazette ".

³ See now the Indian Companies Act, 1913 (7 of 1913).

THE INDIAN LUNACY ACT, 1912.

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(Part I.—Preliminary. Chapter I.)

ACT NO. IV OF 1912.¹

[16th March, 1912.]

An Act to consolidate and amend the law relating to Lunacy.

WHEREAS it is expedient to consolidate and amend the law relating to lunacy ; It is hereby enacted as follows :—

PART I.

Preliminary.

CHAPTER I.

Short title
and extent.

1. (1) This Act may be called the Indian Lunacy Act, 1912.

(2) It extends to the whole of British India, including British Baluchistan, the Santhal Parganas, and the Pargana of Spiti.

Savings.

2. Nothing contained in Part II shall be deemed to affect the powers of any High Court which is or hereafter may be ²[constituted by His Majesty by Letters Patent], over any person found to be a lunatic by inquisition or over the property of such lunatic, or the rights of any person appointed by such Court as guardian of the person or manager of the estate of such lunatic.

Definitions.

3. In this Act, unless there is anything repugnant in the subject or context,—

(1) “asylum” means an asylum ³[or mental hospital] for lunatics established or licensed ⁴[by any Government in British India] :

(2) “cost of maintenance” in an asylum includes the cost of lodging, maintenance, clothing, medicine and care of a lunatic and any expenditure incurred in removing such lunatic to and from an asylum ⁵[together with any other charges specified in this behalf by the ⁶[Provincial Government], in exercise of any power conferred upon ⁶[it] by this Act] :

(3) “District Court” means the principal Civil Court of original jurisdiction in any area outside the local limits for the time being of the Presidency-towns :

¹ For Statement of Objects and Reasons, see Gazette of India, 1911, Pt. V, p. 147 ; for Report of Select Committee, see *ibid.*, 1912, Pt. V, p. 57 ; and for Proceedings in Council, see *ibid.*, 1911, Pt. VI, p. 655, and *ibid.*, 1912, Pt. VI, pp. 3, 30, 187 and 458.

This Act except Chapter IV has been declared to be in force in the Khondmals District by the Khondmals Laws Regulation, 1936 (4 of 1936), s. 3 and Sch., and in the Angul District by the Angul Laws Regulation, 1936 (5 of 1936), s. 3 and Sch.

² Subs. by the A. O. for “established under the Indian High Courts Acts, 1861 to 1911”.

³ Ins. by the Indian Lunacy (Amendment) Act, 1922 (6 of 1922), s. 2.

⁴ Subs. by the A. O. for “by Govt.”

⁵ Subs. by the A. O. for “G. G. in C.”

⁶ Subs. by the A. O. for “him”.

(Part I.—Preliminary. Chapter I. Part II.—Reception, Care and Treatment of Lunatics. Chapter II.—Reception of Lunatics.)

(4) "criminal lunatic" means any person for whose ¹[detention] in, or removal to an asylum, jail or other place of safe custody an order has been made in accordance with the provisions of section 466 or section 471 of the Code of Criminal Procedure, 1898, or of section 30 of the Prisoners Act, 1900, ²[or of section 103A of the Indian Army Act, 1911]:

V of 1898.
III of 1900.
VIII of 1911.

(5) "lunatic" means an idiot or person of unsound mind:

(6) "Magistrate" means a Presidency Magistrate, District Magistrate, Sub-Divisional Magistrate or a Magistrate of the first class specially empowered by the ³[Provincial Government] to perform the functions of a Magistrate under this Act:

(7) "medical officer" means a gazetted ⁴[medical officer in the service of the Crown], and includes a medical practitioner declared by general or special order of the ³[Provincial Government] to be a medical officer for the purposes of this Act:

(8) "medical practitioner" means a holder of a qualification to practise medicine and surgery which can be registered in the United Kingdom in accordance with the law for the time being in force for the registration of medical practitioners, and includes any person declared by general or special order of the ³[Provincial Government] to be a medical practitioner for the purposes of this Act:

(9) "prescribed" means prescribed by this Act or by rule made thereunder:

(10) "reception order" means an order made under the provisions of this Act for the reception into an asylum of a lunatic other than a lunatic so found by inquisition:

(11) "relative" includes any person related by blood, marriage or adoption: and

(12) "rule" means a rule made under this Act.

PART II.

Reception, care and treatment of Lunatics.

CHAPTER II.

RECEPTION OF LUNATICS.

4. (1) No person other than a criminal lunatic or a lunatic so found by inquisition shall be received or detained in an asylum without a reception order save as provided by sections 8, 16 and 98:

Reception of
persons in
asylum.

¹ Subs. by the Repealing and Amending Act, 1923 (11 of 1923), s. 2 and Sch. I, for "confinement".

² Ins. by the Indian Army (Amendment) Act, 1923 (33 of 1923), s. 5.

³ Subs. by the A. O. for "L. G."

⁴ Subs. by the A. O. for "medical officer of Govt."

(Part II.—*Reception, Care and Treatment of Lunatics. Chapter II.—Reception of Lunatics.*)

Provided that any person in charge of an asylum may, with the consent of two of the visitors of such asylum, which consent shall not be given except upon a written application from the intending boarder, receive and lodge as a boarder in such asylum any person who is desirous of submitting himself to treatment.

(2) A boarder received in an asylum under the proviso to sub-section (1) shall not be detained in the asylum for more than twenty-four hours after he has given to the person in charge of the asylum notice in writing of his desire to leave such asylum.

Reception orders on petition.

Application
for reception
order.

5. (1) An application for a reception order shall be made by petition accompanied by a statement of particulars to the Magistrate within the local limits of whose jurisdiction the alleged lunatic ordinarily resides, shall be in the form prescribed and shall be supported by two medical certificates on separate sheets of paper, one of which certificates shall be from a medical officer.

(2) If either of the medical certificates is signed by any relative, partner or assistant of the lunatic or of the petitioner, the petition shall state the fact and, where the person signing is a relative, the exact manner in which he is related to the lunatic or petitioner.

(3) The petition shall also state whether any previous application has been presented for an inquiry into the mental capacity of the alleged lunatic in any Court; and if such application has been made, a certified copy of the order made thereon shall be attached to the petition.

(4) No application for a reception order shall be entertained in any area outside the Presidency-towns unless the ¹[Provincial Government] has, by notification² in the ³[Official Gazette], declared such area as an area in which reception orders may be made.

Application
by whom to
be presented.

6. ⁴[(1) Subject to the provisions of sub-section (3) the petition shall be presented by the husband or wife of the alleged lunatic, or, if there is no husband or wife or the husband or wife is prevented by reason of insanity, absence from India or otherwise from making the presentation, by the nearest relative of the alleged lunatic who is not so prevented.]

¹ Subs. by the A. O. for "L. G."

² For such a notification by the Government of Bengal, see Calcutta Gazette, 1913, Part I, p. 1630; by Bihar and Orissa, see B. and O. Gazette, 1913, Part II, p. 1392; by Madras, see Madras local Rules and Orders, 1923, Vol. I, p. 437; by Bombay, see Bombay local Rules and Orders, 1924, Vol. II, p. 694; by U. P., see U. P. Gazette, 1914, Part I, p. 496; by Assam, see Assam Gazette, 1917, Part II, p. 1364.

³ Subs. by the A. O. for "local official Gazette",

⁴ Subs. by the Indian Lunacy (Amendment) Act, 1926 (5 of 1926), s. 2, for the original sub-section.

(Part II.—*Reception, Care and Treatment of Lunatics. Chapter II.—Reception of Lunatics.*)

(2) ¹[If the petition is not presented by the husband or wife, or, where there is no husband or wife, by the nearest relative of the alleged lunatic, the petition] shall contain a statement of the reasons why it is not so presented, and of the connection of the petitioner with the alleged lunatic, and the circumstances under which he presents the petition.

(3) No person shall present a petition unless he has attained the age of majority as determined by the law to which he is subject, and has within fourteen days before the presentation of the petition, personally seen the said lunatic.

(4) The petition shall be signed and verified by the petitioner, and the statement of prescribed particulars by the person making such statement.

7. (1) Upon the presentation of the petition the Magistrate shall consider the allegations in the petition and the evidence of lunacy appearing by the medical certificates.

Procedure upon petition for reception order.

(2) If he considers that there are grounds for proceeding further, he shall personally examine the alleged lunatic unless for reasons to be recorded in writing he thinks it unnecessary or inexpedient so to do.

(3) If he is satisfied that a reception order may properly be made forthwith, he may make the same accordingly.

(4) If he is not so satisfied, he shall fix a date (notice whereof shall be given to the petitioner and to any other person to whom in the opinion of the Magistrate notice should be given) for the consideration of the petition, and he may make such further or other inquiries of or concerning the alleged lunatic as he thinks fit.

8. Upon the presentation of the petition, the Magistrate may make such order as he thinks fit for the suitable custody of the alleged lunatic pending the conclusion of the inquiry.

Detention of alleged lunatic pending inquiry.

9. The petition shall be considered in private in the presence of the petitioner, the alleged lunatic (unless the Magistrate in his discretion otherwise directs), any person appointed by the alleged lunatic to represent him and such other persons as the Magistrate thinks fit.

Consideration of petition.

10. (1) At the time appointed for the consideration of the petition, the Magistrate may either make a reception order or dismiss the petition, or may adjourn the same for further evidence or inquiry, and may make such order as to the payment of the costs of the inquiry by the person upon whose application it was made, or out of the estate of the alleged lunatic if found to be of unsound mind, or otherwise as he thinks fit.

Order.

(2) If the petition is dismissed, the Magistrate shall record in writing his reasons for dismissing the same, and shall deliver or cause to be delivered to the petitioner a copy of such order.

¹ Subs. by the Indian Lunacy Amendment Act, 1926 (5 of 1926), s. 2, for "If the petition is not so presented, it".

[Part II.—*Reception, Care and Treatment of Lunatics.* Chapter II.—*Reception of Lunatics.*)

Further provisions as to reception orders on petition.

11. No reception order shall be made under section 7 or section 10, save in the case of a lunatic who is dangerous and unfit to be at large, unless—

- (a) the Magistrate is satisfied that the person in charge of an asylum is willing to receive the lunatic, and
- (b) the petitioner or some other person engages in writing to the satisfaction of the Magistrate to pay the cost of maintenance of the lunatic.

Power to appoint substitute for the person upon whose application a reception order has been made.

¹[11A. (1) The Magistrate may, subject to the provisions of this section, by order in writing (hereinafter referred to as an order of substitution), transfer the duties and responsibilities under this Act of the person on whose petition a reception order has been made to any other person who is willing to undertake the same, and such other person shall thereupon be deemed for the purposes of this Act to be the person on whose petition the reception order was made, and all references in this Act to such last-mentioned person shall be construed accordingly :

Provided that no such order of substitution shall release the person upon whose petition the reception order was made or, if he is dead, his legal representative from any liability incurred before the order of substitution was made.

(2) Before making any order of substitution, the Magistrate shall send a notice to the person upon whose petition the reception order was made, if he is alive, and to any relative of the lunatic to whom, in the opinion of the Magistrate, notice should be given ; the notice shall specify the name of the person in whose favour it is proposed to make such order and the date, which shall be not less than twenty days from the sending of the notice, upon which any objection to the making of the order will be considered.

(3) On such date or any subsequent date to which the proceedings may be adjourned, the Magistrate shall consider any objection made by any person to whom notice has been sent, or by any other relative of the lunatic, and shall receive all such evidence as may be produced by or on behalf of any of such persons and such further evidence, if any, as the Magistrate thinks necessary, and may thereafter make or refrain from making an order of substitution :

Provided that, if the person on whose petition the reception order was made is dead and any other person is willing and, in the opinion of the Magistrate, fitted to undertake the duties and responsibilities under this Act of such first-mentioned person, the Magistrate shall make such an order.

(4) If in proceedings under this section any question arises as to the person to whom the duties and responsibilities under this Act of a person upon whose petition a reception order has been made shall be entrusted, the Magistrate shall give preference to the person who is the nearest relative of the

¹ S. 11A was ins. by the Indian Lunacy (Amendment) Act, 1926 (5 of 1926), s. 3.

(Part II.—Reception, Care and Treatment of Lunatics. Chapter II.—Reception of Lunatics.)

lunatic, unless, for reasons to be recorded in writing, the Magistrate considers that such preference would not be in the interests of the lunatic.

(5) The Magistrate may make such order for the payment of the costs of an inquiry under this section by any person who is a party thereto or out of the estate of the lunatic, as he thinks fit.

(6) Any notice under sub-section (2) may be sent by post to the last known address of the person for whom it is intended.]

¹[11B.] (1) When an arrangement has been made with any foreign European State with respect to the reception of lunatics in asylums in British India, the ²[Central Government] may, by notification in the ³[Official Gazette], direct that reception orders may be made under this Act in the case of any lunatic or class of lunatics residing in the territories in India of such foreign European State, and shall in such notification specify the province or provinces within which such reception orders may be made.

Reception order in case of lunatics from foreign States in India.

(2) On publication of a notification under sub-section (1), the provisions of this Act as to the making of reception orders on petition and for temporary detention in suitable custody shall apply in the case of such lunatics, with the following modifications, namely :—

(a) an application for a reception order may be made by petition presented by such officer or agent of the foreign State in which the alleged lunatic ordinarily resides, as may by general or special order be approved by the ⁴[Provincial Government] in this behalf ;

(b) the functions of the Magistrate shall be performed by such officer as the ⁴[Provincial Government] may, by general or special order, appoint in this behalf, and such officer shall be deemed to be the Magistrate having jurisdiction over the alleged lunatic for all the purposes of the said provisions ;

(c) for the purposes of sections 5 and 18 (1), the expressions “ medical officer ” and “ medical practitioner ” shall include such person or class of persons as the ⁴[Provincial Government] may specify in this behalf ;

(d) the Magistrate may in his discretion extend the period prescribed by section 19 within which the alleged lunatic must have been medically examined ; and

(e) sections 6 (1), (2), (3), 11, ⁵[11A] and 34 of the Act, shall not apply, and with such other modifications, restrictions or adaptations as the

¹ This section was originally ins. as s. 11A by the Indian Lunacy (Amendment) Act, 1916 (12 of 1916), and was renumbered as s. 11B by the Indian Lunacy (Amendment) Act, 1926 (5 of 1926), s. 3.

² Subs. by the A. O. for “ G. G. in C.”

³ Subs. by the A. O. for “ Gazette of India ”.

⁴ Subs. by the A. O. for “ L. G.”

⁵ Ins. by the Indian Lunacy (Amendment) Act, 1926 (5 of 1926), s. 4.

(Part II.—Reception, Care and Treatment of Lunatics. Chapter II.—Reception of Lunatics.)

¹[Central Government] may, by notification in the ²[Official Gazette], direct for the purpose of facilitating the application of the said provisions.

(3) A reception order made under this section shall be deemed to be a reception order made under section 7 or section 10, as the case may be.

Reception orders otherwise than on petition.

Reception order in case of a European lunatic soldier, sailor or airman.

12. When any European who is subject to the provisions of the ³Army Act ⁴[the Naval Discipline Act or that Act as modified by the Indian Navy (Discipline) Act, 1934.] ⁵[the Air Force Act or the Indian Air Force Act, 1932] has been declared a lunatic in accordance with the provisions of the military ⁴[, naval] ⁶[or air force] regulations in force for the time being, and it appears to any administrative medical officer that he should be removed to an asylum, such administrative medical officer may, if he thinks fit, make a reception order under his hand for the admission of the said lunatic into any asylum which has been duly authorised⁷ for the purpose by the ¹[Central Government].

44 & 45
Vict., c. 58.
XXXIV of
1934.
XIV of 1932.

Powers and duties of police in respect of wandering or dangerous lunatics and lunatics cruelly treated or not under proper care and control.

13. (1) Every officer in charge of a police-station may arrest or cause to be arrested all persons found wandering at large within the limits of his station whom he has reason to believe to be lunatics, and shall arrest or cause to be arrested all persons within the limits of his station whom he has reason to believe to be dangerous by reason of lunacy. Any person so arrested shall be taken forthwith before the Magistrate.

(2) Every officer in charge of a police-station who has reason to believe that any person within the limits of his station is deemed to be a lunatic and is not under proper care and control, or is cruelly treated or neglected by any relative or other person having the charge of him, shall immediately report the fact to the Magistrate.

Reception order in case of wandering and dangerous lunatics.

14. Whenever any person is brought before a Magistrate under the provisions of sub-section (1) of section 13, the Magistrate shall examine such person, and if he thinks that there are grounds for proceeding further, shall cause him to be examined by a medical officer, and may make such other inquiries as he thinks fit; and if the Magistrate is satisfied that such person is a lunatic and a proper person to be detained, he may, if the medical officer who has examined such person gives a medical certificate with regard to

¹ Subs. by the A. O. for "G. G. in C."

² Subs. by the A. O. for "Gazette of India".

³ Coll. Stats., Vol. I.

⁴ Ins. by the Amending Act, 1934 (35 of 1934), s. 2 and Sch.

⁵ Subs. by the Indian Air Force Act, 1932 (14 of 1932), s. 130 and Sch., for "or the Air Force Act" which had been ins. by the Repealing and Amending Act, 1927 (10 of 1927), s. 2 and Sch. I.

⁶ Ins. by Act 10 of 1927, s. 2 and Sch. I.

⁷ For notifications under this section, see Gen. R. & O., Vol. IV, pp. 342-343.

(Part II.—*Reception, Care and Treatment of Lunatics.* Chapter II.—*Reception of Lunatics.*)

such person, make a reception order for the admission of such lunatic into an asylum :

Provided that, if any friend or relative desires that the lunatic be sent to a licensed asylum and engages in writing to the satisfaction of the Magistrate to pay the cost of maintenance of the lunatic in such asylum, the Magistrate shall, if the person in charge of such asylum consents, make a reception order for the admission of the lunatic into the licensed asylum mentioned in the engagement :

Provided further that if any friend or relative of the lunatic enters into a bond with or without sureties for such sum of money as the Magistrate thinks fit, conditioned that such lunatic shall be properly taken care of, and shall be prevented from doing injury to himself or to others, the Magistrate, instead of making a reception order, may, if he thinks fit, make him over to the care of such friend or relative.

15. (1) If it appears to the Magistrate, on the report of a police-officer or the information of any other person, that any person within the limits of his jurisdiction deemed to be a lunatic is not under proper care and control or is cruelly treated or neglected by any relative or other person having the charge of him, the Magistrate may cause the alleged lunatic to be produced before him, and summon such relative or other person as has or ought to have the charge of him.

Order in case of lunatic cruelly treated or not under proper care and control.

(2) If such relative or other person is legally bound to maintain the alleged lunatic, the Magistrate may make an order for such alleged lunatic being properly cared for and treated, and, if such relative or other person wilfully neglects to comply with the said order, the Magistrate may sentence him to imprisonment for a term which may extend to one month.

(3) If there is no person legally bound to maintain the alleged lunatic, or if the Magistrate thinks fit so to do, he may proceed as prescribed in section 14, and upon being satisfied in manner aforesaid that the person deemed to be a lunatic is a lunatic and a proper person to be detained under care and treatment may, if a medical officer gives a medical certificate with regard to such lunatic, make a reception order for the admission of such lunatic into an asylum.

16. (1) When any person alleged to be a lunatic is brought before a Magistrate under the provisions of section 13 or section 15, the Magistrate may, by an order in writing, authorise the detention of the alleged lunatic in suitable custody for such time not exceeding ten days as may be, in his opinion, necessary to enable the medical officer to determine whether such alleged lunatic is a person in respect of whom a medical certificate may be properly given.

Detention of alleged lunatic pending report by medical officer.

(2) The Magistrate may, from time to time, for the same purpose by order in writing, authorise such further detention of the alleged lunatic for periods not exceeding ten days at a time as he thinks necessary :

(Part II.—Reception, Care and Treatment of Lunatics. Chapter II.—Reception of Lunatics.)

Provided that no person shall be detained in accordance with the provisions of this section for a total period exceeding thirty days from the date on which he was first brought before the Magistrate.

Commissioner of Police, etc., to act in the Presidency-town.

17. All acts which the Magistrate is authorised or required to do by sections 14, 15 or 16 may be done in the Presidency-towns ¹* * * by the Commissioner of Police; and all duties which an officer in charge of a police-station is authorised or required to perform may be performed in any of the Presidency-towns by an officer of the police force not below the rank of an inspector.

Further provisions as to reception orders and medical certificates.

Medical certificates.

18. (1) Every medical certificate under this Act shall be made and signed by a medical practitioner or a medical officer, as the case may be, and shall be in the form prescribed.

(2) Every medical certificate shall state the facts upon which the person certifying has formed his opinion that the alleged lunatic is a lunatic, distinguishing facts observed by himself from facts communicated by others; and no reception order on petition shall be made upon a certificate founded only upon facts communicated by others.

(3) Every medical certificate made under this Act shall be evidence of the facts therein appearing and of the judgment therein stated to have been formed by the person certifying on such facts, as if the matters therein appearing had been verified on oath.

Time and manner of medical examination of lunatic.

19. (1) A reception order required to be founded on a medical certificate shall not be made unless the person who signs the medical certificate, or, where two certificates are required, each person who signs a certificate has personally examined the alleged lunatic, in the case of an order upon petition, not more than seven clear days before the date of the presentation of the petition, and, in all other cases not more than seven clear days before the date of the order.

(2) Where two medical certificates are required, a reception order shall not be made unless each person signing a certificate has examined the alleged lunatic separately from the other.

Authority for reception.

20. A reception order, if the same appears to be in conformity with this Act, shall be sufficient authority for the petitioner or any person authorised by him, or in the case of an order not made upon petition, for the person authorised so to do by the person making the order, to take the lunatic and convey him to the place mentioned in such order and for his reception and detention therein, or in any asylum to which he may be removed in accordance with the provisions of this Act, and the order may be acted on without further evidence of the signature or of the jurisdiction of the person making the order :

¹ The words "or Rangoon", rep. by the A. O.

(Part II.—Reception, Care and Treatment of Lunatics. Chapter II.—Reception of Lunatics.)

¹[Provided that no reception order shall continue to have effect—

- (a) after the expiry of thirty days from the date on which it was made, unless the lunatic has been admitted to the place mentioned therein within that period, or
- (b) after the discharge, under the provisions of this Act, of the lunatic from such place or from any asylum to which he may have been removed.]

21. Any authority making a reception order under this Part shall forthwith send a certified copy of the order to the person in charge of the asylum into which such lunatic is to be admitted.

Copy of reception order to be sent to person in charge of asylum.

22. Subject to the provisions of section 85, no Magistrate shall make a reception order for the admission of any lunatic into ²[any Government asylum] outside the province in which the Magistrate exercises jurisdiction.

Restriction as to asylums into which reception orders may direct admission.

Detention of lunatics pending removal to asylum.

23. When any reception order has been made under sections 7, 10, 14 or 15, the Magistrate may, for reasons to be recorded in writing, direct that the lunatic, pending his removal to an asylum, be detained in suitable custody in such place as the Magistrate thinks fit.

Detention of lunatics pending removal to asylum.

Reception and detention of criminal lunatics.

V of 1898.
III of 1900.
VIII of 1911.

24. An order under section 466 or section 471 of the Code of Criminal Procedure, 1898, or under section 30 of the Prisoners Act, 1900 ³[or under section 103A of the Indian Army Act, 1911], directing the reception of a criminal lunatic into any asylum which is prescribed for the reception of criminal lunatics shall be sufficient authority for the reception and detention of any person named therein in such asylum or in any other asylum to which he may be lawfully transferred.

Reception and detention of criminal lunatics.

Reception after inquisition.

25. A lunatic so found by inquisition may be admitted into an asylum—
- (1) in the case of an inquisition under Chapter IV, on an order made by, or under the authority of, the High Court ;
 - (2) in the case of an inquisition under Chapter V, on an order made by the District Court.

Reception after inquisition.

26. (1) When any lunatic has been admitted into an asylum in accordance with the provisions of section 25, the High Court or the District Court.

Order for payment of cost of

¹ Ins. by the Indian Lunacy (Amendment) Act, 1923 (32 of 1923), s. 2.

² Subs. by the A. O. for "any asylum established by Govt."

³ Ins. by the Indian Army (Amendment) Act, 1923 (33 of 1923), s. 5.

(Part II.—*Reception, Care and Treatment of Lunatics. Chapter II.—Reception of Lunatics. Chapter III.—Care and Treatment.*)

maintenance
of lunatic.

as the case may be, shall, on the application of the person in charge of the asylum, make an order for the payment of the cost of maintenance of the lunatic in the asylum, and may from time to time direct that any sum of money payable under such order shall be recovered from the estate of the lunatic or of any person legally bound to maintain him :

Provided that if at any time it shall appear to the satisfaction of the Court that the lunatic has not sufficient property, and that no person legally bound to maintain such lunatic has sufficient means for the payment of such cost, the Court shall certify the same instead of making such order for the payment of the cost as aforesaid.

(2) An order under sub-section (1) shall be enforced in the same manner and shall be of the same force and effect and subject to the same appeal as a decree made by the Court in a suit in respect of the property or person therein mentioned.

Amendment of order or certificate.

Amendment
of order or
certificate.

27. If, after the reception of any lunatic into any asylum on a reception order, it appears that the order upon which he was received or the medical certificate or certificates upon which such order was made is or are defective or incorrect, the same may at any time afterwards be amended by the person or persons signing the same with the sanction of two or more of the visitors of the said asylum, one of whom shall be a medical officer.

CHAPTER III.

CARE AND TREATMENT.

Visitors.

Appointment
of visitors.

28. (1) The ¹[Provincial Government] shall appoint for every asylum not less than three visitors, one of whom at least shall be a medical officer.

(2) The Inspector-General of Prisons (where such office exists) shall be a visitor *ex-officio* of all the asylums within the limits of his jurisdiction.

Monthly
inspection
by visitors.

29. Two or more of the visitors, one of whom shall be a medical officer, shall, once at least in every month, together inspect every part of the asylum of which they are visitors, and see and examine, as far as circumstances will permit, every lunatic and boarder therein, and the order and certificate for the admission of every lunatic admitted since the last visitation of the visitors, and shall enter in a book to be kept for that purpose any remarks which they may deem proper in regard to the management and condition of the asylum and the inmates thereof.

¹ Subs. by the A. O. for "L. G."

(Part II.—Reception, Care and Treatment of Lunatics. Chapter III.—Care and Treatment.)

30. (1) When any person is ¹[detained] under the provisions of section 466 or section 471 of the Code of Criminal Procedure, 1898 ²[or under the provisions of section 103A of the Indian Army Act, 1911], the Inspector-General of Prisons, if such person is ¹[detained] in a jail or the visitors of the asylum or any two of them, if he is ¹[detained] in an asylum, may visit him in order to ascertain his state of mind ; and he shall be visited once at least in every six months by such Inspector-General or by two of such visitors as aforesaid ; and such Inspector-General or visitors shall make a special report as to the state of mind of such person to the authority under whose order he is ¹[detained].

Inspection of criminal lunatics by Inspector-General or visitors.

(2) The ³[Provincial Government] may empower the officer in charge of the jail in which such person may be ¹[detained] to discharge all or any of the functions of the Inspector-General under sub-section (1).

Discharge of lunatics.

31. (1) Three of the visitors of any asylum, of whom one shall be a medical officer, may, by order in writing, direct the discharge of any person detained in such asylum, and such person shall thereupon be discharged :

Order of discharge from asylum by visitors.

Provided that no order under this sub-section shall be made in the case of a person detained under a reception order under section 12, or, in the case of a criminal lunatic, otherwise than as provided by section 30 of the Prisoners Act, 1900.

(2) When such order is made, if the person is detained under the order of any public authority, notice of the order of discharge shall be immediately communicated to such authority.

32. (1) A lunatic detained in an asylum under a reception order, made on petition, shall be discharged if the person on whose petition the reception order was made so applies in writing to the person in charge of the asylum :

Discharge of lunatics in other cases and of European military lunatics.

Provided that no lunatic shall be discharged under the provisions of sub-section (1) if the officer in charge of the asylum certifies in writing that the lunatic is dangerous and unfit to be at large.

(2) A person detained in an asylum under a reception order made under section 12 shall be detained therein until he is discharged therefrom in accordance with the military ⁴[, naval] ⁵[or air force] regulations in force for the time being, or until the officer making the order applies for his transfer to the military ⁴[, naval] ⁵[or air force] authorities in view to his removal to England.

¹ Subs. by the Repealing and Amending Act, 1923 (11 of 1923), s. 2 and Sch. I, for " confined ".

² Ins. by the Indian Army (Amendment) Act, 1923 (33 of 1923), s. 5.

³ Subs. by the A. O. for " L. G. "

⁴ Ins. by the Amending Act, 1934 (35 of 1934), s. 2 and Sch.

⁵ Ins. by the Repealing and Amending Act, 1927 (10 of 1927), s. 2 and Sch. I.

(Part II.—Reception, Care and Treatment of Lunatics. Chapter III.—Care and Treatment.)

(3) Whenever it appears to the officer in charge of an asylum that the discharge of a person therein detained under an order made under section 12 is necessary either on account of his recovery, or for any other purpose, such person shall be brought before the visitors of the asylum, and on the visitors recording their opinion that the discharge should be made, the General or other Officer Commanding the division, district, brigade, or force, or other officer authorised to order the admission of such persons into an asylum, shall forthwith direct him to be discharged, and such discharge shall take place in accordance with the military ¹[, naval] ²[or air force] regulations in force for the time being.

Order of discharge on undertaking of relative for due care of the lunatic.

33. When any relative or friend of a lunatic detained in any asylum under the provisions of sections 14, 15 or 17 is desirous that such lunatic shall be delivered over to his care and custody, he may make application to the authority under whose order the lunatic is detained, and such authority, if it thinks fit, in consultation with the person in charge of the asylum and with the visitors or with one of them being a medical officer, and upon such relative or friend entering into a bond with or without sureties for such sum of money as the said authority thinks fit conditioned that such lunatic shall be properly taken care of and shall be prevented from doing injury to himself or to others, may make an order for the discharge of such lunatic, and such lunatic shall thereupon be discharged.

Discharge of person subsequently found on inquisition not to be of unsound mind.

34. If any lunatic detained in an asylum on a reception order made under sections 7, 10, 14, 15 or 17 is subsequently found on an inquisition under Chapter IV or Chapter V not to be of unsound mind and incapable of managing himself and his affairs, the person in charge of the asylum shall forthwith, on the production of a certified copy of such finding, discharge the alleged lunatic from the asylum.

Removal of lunatics.

Removal of lunatics and criminal lunatics.

35. (1) ³[Any lunatic may, in accordance with any general or special order of the ⁴[Provincial Government], be removed from ⁵[any Government asylum] to any other asylum within the province, or to any other asylum in any other province, with the consent of the ⁴[Provincial Government] of that province :]

Provided that no lunatic admitted into an asylum on a reception order made on petition shall be removed in accordance with the provisions of this sub-section until notice of such intended removal has been given to the petitioner.

¹ Ins. by the Amending Act, 1934 (35 of 1934), s. 2 and Sch.

² Ins. by the Repealing and Amending Act, 1927 (10 of 1927), s. 2 and Sch. I.

³ Subs. by the Devolution Act, 1920 (38 of 1920), s. 2 and Sch. I, for the original words.

⁴ Subs. by the A. O. for "L. G."

⁵ Subs. by the A. O. for "any asylum established by Govt."

(Part II.—Reception, Care and Treatment of Lunatics. Chapter III.—Care and Treatment. Part III.—Judicial Inquisition as to Lunacy. Chapter IV.—Proceedings in Lunacy in Presidency-towns.)

V of 1898.

VIII of 1911.

(2) The ¹[Provincial Government] may make such general or special order as ²[it] thinks fit directing the removal of any person for whose ³[detention] an order has been made under section 466 or section 471 of the Code of Criminal Procedure, 1898, ⁴[or under section 103A of the Indian Army Act, 1911], from the place where he is for the time being ⁵[detained] to any asylum, jail or other place of safe custody ⁶[in the province, or to any asylum, jail or other place of safety in any other province with the consent of the ⁷[Provincial Government] of that province.]

Escape and re-capture.

36. Every person received into an asylum under any such order as is required by this Act, may be detained therein until he is removed or discharged as authorised by law, and in case of escape may, by virtue of such order, be re-taken by any police-officer or by the person in charge of such asylum, or any officer or servant belonging thereto, or any other person authorised in that behalf by the said person in charge, and conveyed to and received and detained in such asylum :

Provided that in the case of a lunatic not being a criminal lunatic or a lunatic in respect of whom a reception order has been made under section 12, the power to re-take such escaped lunatic under this section shall be exerciseable only for a period of one month from the date of his escape.

PART III.

Judicial Inquisition as to Lunacy.

CHAPTER IV.

PROCEEDINGS IN LUNACY IN PRESIDENCY-TOWNS.

Inquisition.

37. The Courts having jurisdiction under this Chapter shall be the High Courts of Judicature at Fort William, Madras and Bombay.

Jurisdiction in lunacy in Presidency-towns.

¹ Subs. by the A. O. for the words "L. G.", which were subs. by the Devolution Act, 1920 (38 of 1920), s. 2 and Sch. I, for "G. G. in C."

² Subs. by Act 38 of 1920, s. 2 and Sch. I, for "he".

³ Subs. by the Repealing and Amending Act, 1923 (11 of 1923), s. 2 and Sch. I, for "confinement".

⁴ Ins. by the Indian Army (Amendment) Act, 1923 (33 of 1923), s. 5.

⁵ Subs. by Act 11 of 1923, s. 2 and Sch. I, for "confined".

⁶ Subs. by Act 38 of 1920, s. 2 and Sch. I, for "in British India".

⁷ Subs. by the A. O. for "L. G."

(Part III.—Judicial Inquisition as to Lunacy. Chapter IV.—Proceedings in Lunacy in Presidency-towns.)

Court may order inquisition as to persons alleged to be insane.

38. (1) The Court may upon application by order direct an inquisition whether a person subject to the jurisdiction of the Court who is alleged to be lunatic, is of unsound mind and incapable of managing himself and his affairs.

(2) Such order may also contain directions for inquiries concerning the nature of the property belonging to the alleged lunatic, the persons who are his relatives, the time during which he has been of unsound mind, or such other matters as to the Court may seem proper.

Application by whom to be made.

39. Application for such inquisition may be made by any relative of the alleged lunatic, or by the Advocate-General.

Notice of time and place of inquisition.

40. (1) Notice shall be given to the alleged lunatic of the time and place at which it is proposed to hold the inquisition.

(2) If it appears that personal service on the alleged lunatic would be ineffectual, the Court may direct such substituted service of the notice as it thinks fit.

(3) The Court may also direct a copy of such notice to be served upon any relative of the alleged lunatic and upon any other person to whom in the opinion of the Court notice of the application should be given.

Powers of Court in respect of attendance and examination of lunatic.

41. (1) The Court may require the alleged lunatic to attend at such convenient time and place as it may appoint for the purpose of being personally examined by the Court, or by any person from whom the Court may desire to have a report of the mental capacity and condition of such alleged lunatic.

(2) The Court may likewise make an order authorising any person or persons therein named to have access to the alleged lunatic for the purpose of a personal examination.

Rules respecting attendance and examination of females alleged to be lunatic.
Power to direct District Court to make inquisition in certain cases.

42. The attendance and examination of the alleged lunatic under the provisions of section 41 shall, if the alleged lunatic be a woman who, according to the manners and customs of the country, ought not to be compelled to appear in public, be regulated by the law and practice for the examination of such persons in other civil cases.

43. (1) If the alleged lunatic is not within the local limits of the jurisdiction of the Court, and the inquisition cannot conveniently be made in the manner hereinbefore provided, the Court may direct the inquisition to be made before the District Court within whose local jurisdiction the alleged lunatic may be; and such District Court shall accordingly proceed to make such inquisition in the same manner as if the alleged lunatic were subject to its jurisdiction, and shall certify its finding upon the matters of inquisition to the Court directing the inquisition.

(2) The record of evidence taken upon the inquisition shall be transmitted, together with any remarks the Court may think fit to make thereon, to the Court by which the inquisition was directed.

Amendment of finding of District

44. If the finding of the District Court appears to the Court directing the inquisition to be defective or insufficient in point of form, it may either

(Part III.—Judicial Inquisition as to Lunacy. Chapter IV.—Proceedings in Lunacy in Presidency-towns.)

amend the same or refer it back to the Court which made the inquisition to be amended.

Court if defective or insufficient in form.

Proceedings on finding of Court.

45. The finding of the Court on the inquisition or the finding of the District Court to which the inquisition may have been referred under the provisions of section 43 with such amendments as may be made under the provisions of section 44, as the case may be, shall have the same effect, and be proceeded on in the same manner in regard to the appointment of a guardian of the person and a manager of the estate of the lunatic as the findings referred to in section 12 of the ¹Lunacy (Supreme Courts) Act, 1858, immediately before the commencement of this Act.

XXXIV of 1858.

Judicial powers over person and estate of lunatic.

46. (1) The Court may make orders for the custody of lunatics so found by inquisition and the management of their estates.

Custody of lunatics and management of their estates.

(2) When upon the inquisition it is specially found that the person to whom the inquisition relates is of unsound mind so as to be incapable of managing his affairs, but that he is capable of managing himself, and is not dangerous to himself or to others, the Court may make such orders as it thinks fit for the management of the estate of the lunatic including proper provision for the maintenance of the lunatic and of such members of his family as are dependent on him for maintenance, but it shall not be necessary to make any order as to the custody of the person of the lunatic.

47. The Court, on the appointment of a manager of the estate of a lunatic, may direct by the order of appointment, or by any subsequent order, that such manager shall have such powers for the management of the estate as to the Court may seem necessary and proper, reference being had to the nature of the property, whether moveable or immoveable, of which the estate may consist :

Powers of manager in respect of management of lunatic's estate.

Provided that no manager so appointed shall without the permission of the Court—

(a) mortgage, charge or transfer by sale, gift, exchange or otherwise, any immoveable property of the lunatic ; or

(b) lease any such property for a term exceeding five years.

Such permission may be granted subject to any condition or restriction which the Court thinks fit to impose.

48. The Court may, on application made to it by petition concerning any matter whatsoever connected with the lunatic or his estate, make such order, subject to the provisions of this Chapter, respecting the application, as in the circumstances it thinks fit.

Power to make order concerning any matter connected with the lunacy.

¹ Rep. by the Indian Lunacy Act, 1912 (4 of 1912).

(Part III.—Judicial Inquisition as to Lunacy. Chapter IV.—Proceedings in Lunacy in Presidency-towns.)

Management and administration.

Power to dispose of lunatic's property for certain purposes.

49. The Court may, if it appears to be just or for the lunatic's benefit, order that any property, moveable or immoveable, of the lunatic, and whether in possession, reversion, remainder, or contingency, be sold, charged, mortgaged, dealt with or otherwise disposed of as may seem most expedient for the purpose of raising or securing or repaying with or without interest money to be applied or which has been applied to all or any of the following purposes, namely—

- (1) the payment of the lunatic's debts or engagements ;
- (2) the discharge of any incumbrance on his property ;
- (3) the payment of any debt or expenditure incurred for the lunatic's maintenance or otherwise for his benefit ;
- (4) the payment of or provision for the expenses of his future maintenance and the maintenance of such members of his family as are dependent on him for maintenance, including the expenses of his removal to Europe, if he shall be so removed, and all expenses incidental thereto ;
- (5) the payment of the costs of any inquiry under this Chapter, and of any costs incurred by order or under the authority of the Court.

Execution of conveyances and powers by manager under order of Court.

50. (1) The manager of the lunatic's estate shall, in the name and on behalf of the lunatic, execute all such conveyances and instruments of transfer relative to any sale, mortgage or other disposition of his estate as the Court may order.

(2) Such manager shall, in like manner, under the order of the Court, exercise all powers whatsoever vested in a lunatic, whether the same are vested in him for his own benefit or in the character of trustee or guardian.

Court may order performance of contract.

51. Where a person, having contracted to sell or otherwise dispose of his estate or any part thereof, afterwards becomes lunatic, the Court may, if the contract is such as the Court thinks ought to be performed, direct the manager of the estate to execute such conveyances and to do such other acts in fulfilment of the contract as it shall think proper.

Dissolution and disposal of property of partnership on a member becoming lunatic.

52. (1) Where a person, being a member of a partnership firm, is found to be a lunatic, the Court may, on the application of the other partners, or of any person who appears to the Court to be entitled to require the same, dissolve the partnership.

(2) Upon such dissolution, or upon a dissolution by decree of Court or otherwise by due course of law, the manager of the estate may, in the name and on behalf of the lunatic, join with the other partners in disposing of the partnership property upon such terms, and shall do all such acts for carrying into effect the dissolution of the partnership, as the Court shall think proper.

(Part III.—Judicial Inquisition as to Lunacy. Chapter IV.—Proceedings in Lunacy in Presidency-towns.)

53. Where a lunatic has been engaged in business the Court may, if it appears to be for the lunatic's benefit that the business premises should be disposed of, order the manager of the estate to sell and dispose of the same, and the moneys arising from such sale shall be applied in such manner as the Court may direct.

Disposal of business premises.

54. Where a lunatic is entitled to a lease or under-lease, and it appears to be for the benefit of his estate that it should be disposed of, the manager of the estate may, by order of the Court, surrender, assign or otherwise dispose of the same to such person for such valuable or nominal consideration, and upon such terms, as the Court thinks fit.

Manager may dispose of lease.

55. If a lunatic is possessed of any immoveable property situate beyond the local limits of the jurisdiction of the Court which, by the law in force in the Province wherein such property is situated, subjects the proprietor, if disqualified, to the jurisdiction of the Court of Wards, the said Court of Wards may assume the charge of such property and manage the same according to the law for the time being in force for such management :

Assumption of charge by Court of Wards of land belonging to a lunatic in certain cases.

Provided that—

- (1) in such case, no further proceedings in respect of the lunacy shall be taken under any such law, nor shall it be competent to the Court of Wards or to any Collector to appoint a guardian of the person of the said lunatic or a manager of the estate except of the immoveable property which so subjects the proprietor as aforesaid :
- (2) the surplus of the income of such property, after providing for the payment of the Government revenue and expenses of management, shall be disposed of from time to time in such manner as the High Court may direct :
- (3) nothing contained in this section shall affect the powers given to the High Court by sections 49, 50 and 51 or (except so far as relates to the management of the said immoveable property which so subjects the proprietor as aforesaid) the powers given by any other section.

56. (1) If it appears to the Court, having regard to the situation and condition in life of the lunatic and his family and the other circumstances of the case to be expedient that his property should be made available for his or their maintenance in a direct and inexpensive manner it may, instead of appointing a manager of the estate, order that the property if money or if of any other description the produce thereof, when realized, be paid to such person as the Court may think fit, to be applied for the purpose aforesaid.

Power to apply property for lunatic's maintenance without appointing manager in certain cases.

(2) The receipt of the person so appointed shall be a valid discharge to any person who pays any money or delivers any property of the lunatic to such person.

(Part III.—Judicial Inquisition as to Lunacy. Chapter IV.—Proceedings in Lunacy in Presidency-towns.)

Vesting orders.

Power to order transfer of stock belonging to lunatic in certain cases.

57. Where any stock or Government securities or any share in a company (transferable within British India or the dividends of which are payable there) is or are standing in the name of, or vested in, a lunatic, beneficially entitled thereto, or in a manager of the estate of a lunatic, or in a trustee for him, and the manager dies intestate, or himself becomes lunatic, or is out of the jurisdiction of the Court, or it is uncertain whether the manager is living or dead, or he neglects or refuses to transfer the stock, securities or shares, or to receive and pay over thereof the dividends to a new manager or as the Court directs, within fourteen days after being required by the Court to do so, then the Court may order some fit person to make such transfer, or to transfer the same, and to receive and pay over the dividends in such manner as the Court directs.

Power to order transfer of stock of lunatic residing out of British India and the United Kingdom.

58. Where any such stock or Government securities or share in a company is or are standing in the name of, or vested in, any person residing out of British India and not in any part of the United Kingdom, the Court upon being satisfied that such person has been declared lunatic, and that his personal estate has been vested in a person appointed for the management thereof, according to the law of the place where he is residing, may order some fit person to make such transfer of the stock, securities or shares or of any part thereof, to or into the name of the person so appointed or otherwise, and also to receive and pay over the dividends and proceeds as the Court thinks fit.

General.

Power to apply property for lunatic's maintenance in case of temporary lunacy.

59. If it appears to the Court that the unsoundness of mind of a lunatic is in its nature temporary, and that it is expedient to make temporary provision for his maintenance or for the maintenance of such members of his family as are dependent on him for their maintenance, the Court may, in like manner as under section 56, direct his property or a sufficient part of it to be applied for the purpose aforesaid.

Proceedings in lunacy to cease or to be set aside if Court finds that the unsoundness of mind has ceased.

60. (1) When any person has been found under this Chapter to be of unsound mind, and it is subsequently shown to the Court that there is reason to believe that such unsoundness of mind has ceased, the Court may make an order for inquiring whether such person is still of unsound mind and incapable of managing himself and his affairs.

(2) The inquiry shall be conducted as far as may be in the manner prescribed in this Chapter for an inquisition into the unsoundness of mind of an alleged lunatic; and if it is found that the unsoundness of mind has ceased, the Court shall order all proceedings in the lunacy to cease or to be set aside on such terms and conditions as to the Court may seem fit.

Power of Court to make rules.

61. The Court may, from time to time, make rules for the purpose of carrying into effect the provisions of this Chapter in matters of lunacy.

(Part III.—Judicial Inquisition as to Lunacy. Chapter V.—Proceedings in Lunacy outside Presidency-towns.)

CHAPTER V.

PROCEEDINGS IN LUNACY OUTSIDE PRESIDENCY-TOWNS.

Inquisition.

62. Whenever any person not subject to the jurisdiction of any of the Courts mentioned in section 37 is possessed of property and is alleged to be a lunatic, the District Court, within whose jurisdiction such person is residing may, upon application, by order direct an inquisition for the purpose of ascertaining whether such person is of unsound mind and incapable of managing himself and his affairs.

Power of District Court to institute inquisition as to persons alleged to be lunatic.

Lunacy.

XIX of 1841. V of 1908. 63. (1) Application for such inquisition may be made by any relative of the alleged lunatic or by any public Curator appointed under the Succession (Property Protection) Act, 1841 (hereinafter referred to as the Curator), or by the Government Pleader, as defined in the Code of Civil Procedure, 1908, or if the property of the alleged lunatic consists in whole or in part of land or any interest in land, by the Collector of the district in which it is situate.

Application by whom to be made.

(2) If the property or any part thereof is of such a description that it would by the law in force in any Province where such property is situate subject the proprietor, if disqualified, to the jurisdiction of the Court of Wards, the application may be made by the Collector on behalf of the Court of Wards.

64. The provisions of sections 40, 41 and 42 shall regulate the proceedings of the District Court with regard to the matters to which they relate.

Regulation of proceedings of District Courts.

65. (1) The District Court, if it thinks fit, may appoint two or more persons to act as assessors to the Court in the said inquisition.

Inquisition by District Court and finding thereon.

(2) Upon the completion of the inquisition, the Court shall determine whether the alleged lunatic is of unsound mind and incapable of managing himself and his affairs or may come to a special finding that such alleged lunatic is of unsound mind so as to be incapable of managing his affairs, but that he is capable of managing himself and is not dangerous to himself or to others.

66. (1) If the alleged lunatic resides at a distance of more than fifty miles from the place where the District Court is held to which the application is made, the said Court may issue a Commission to any subordinate Court to

Inquisition by subordinate Court on commission issued

¹ See now the Indian Succession Act, 1925 (39 of 1925).

(Part III.—*Judicial Inquisition as to Lunacy. Chapter V.—Proceedings in Lunacy outside Presidency-towns.*)

by District Court and proceedings thereon.

make the inquisition, and such subordinate Court shall thereupon conduct the inquisition in the manner hereinbefore provided in this Chapter.

(2) On the completion of the inquisition the subordinate Court shall transmit the record of its proceedings with the opinions of the assessors if assessors have been appointed, and its own opinion on the case; and the District Court shall thereupon proceed to dispose of the application in the manner provided in section 65, sub-section (2):

Provided that the District Court may direct the subordinate Court to make such further or other inquiries as it thinks fit before disposing of the application.

Judicial powers over person and estate of lunatic.

Custody of lunatics and management of their estates.

67. (1) The Court may make orders for the custody of lunatics so found by inquisition and the management of their estates.

(2) When upon the inquisition it is specially found that the person to whom the inquisition relates is of unsound mind so as to be incapable of managing his affairs, but that he is capable of managing himself and is not dangerous to himself or to others, the Court may make such orders as it thinks fit for the management of the estate of the lunatic including proper provisions for the maintenance of the lunatic and of such members of his family as are dependent on him for maintenance, but it shall not be necessary to make any order as to the custody of the person of the lunatic.

Court of Wards to be authorised in certain cases to take charge of estate of lunatic.

68. If the estate of a lunatic so found or any part thereof consists of property which, by the law for the time being in force, subjects the proprietor, if disqualified, to the jurisdiction of the Court of Wards, the Court of Wards shall be authorised to take charge of the same.

Power to direct Collector to take charge of person and estate of lunatic in certain cases.

69. (1) If the estate of a lunatic so found consists in whole or in part of land or any interest in land, but is not of such a nature that it would subject the proprietor, if disqualified, to the jurisdiction of the Court of Wards, the District Court may direct the Collector to take charge of the person and estate of the lunatic:

Provided that no such order shall be made without the consent of the Collector previously obtained.

(2) The Collector shall thereupon appoint a manager of the estate, and may appoint a guardian of the person of the lunatic.

Control over proceedings of Collector.

70. All proceedings of the Collector in regard to the person or estate of a lunatic under this Chapter shall be subject to the control of the ¹[Provincial Government] or of such authority as it may appoint in this behalf.

¹ Subs. by the A. O. for "L. G."

(Part III.—Judicial Inquisition as to Lunacy. Chapter V.—Proceedings in Lunacy outside Presidency-towns.)

71. (1) In all other cases the District Court shall appoint a manager of the estate of the lunatic and may appoint a guardian of his person :

Power of District Court to appoint guardian and manager and take security from manager.

Provided that a District Court may, instead of appointing a manager of the estate of a lunatic, exercise any of the powers conferred on the High Court under sections 56 and 59.

(2) Any person who has been appointed by the District Court or Collector to manage the estate of a lunatic shall, if so required, enter into a bond in such form and with such sureties as to the Court or the Collector, as the case may be, may seem fit, engaging duly to account for what he may receive in respect of the property of the lunatic.

72. The legal heir of a lunatic shall not be appointed to be the guardian of the person of such lunatic unless the Court or the Collector, as the case may be, for reasons to be recorded in writing, considers that such an appointment is for the benefit of the lunatic.

Restriction on appointment of legal heir of lunatic to be guardian of his person.

73. A guardian of the person of a lunatic or a manager of his estate appointed under this Chapter shall be paid such allowance, if any, as the Court or the Collector, as the case may be, thinks fit for his care and pains in the execution of his duties.

Remuneration of managers and guardians.

74. (1) The person appointed to be guardian of a lunatic's person shall have the care of his person and maintenance.

Duties of guardian.

(2) When a distinct guardian is appointed, the manager shall pay to the guardian such allowance as may be fixed by the District Court or the Collector, as the case may be, for the maintenance of the lunatic and such members of his family as are dependent on him for their maintenance.

75. (1) Every manager of the estate of a lunatic appointed as aforesaid may exercise the same powers in the management of the estate as might have been exercised by the proprietor if not a lunatic, and may collect and pay all just claims, debts and liabilities due to or by the estate of the lunatic :

Powers of manager.

Provided that no manager so appointed shall without the permission of the Court—

(a) mortgage, charge, or transfer by sale, gift, exchange or otherwise any immoveable property of the lunatic,

(b) lease any such property for a term exceeding five years.

Such permission may be granted subject to any condition or restriction which the Court thinks fit to impose.

(2) Before granting any such permission, the Court may cause notice of the application for such permission to be served on any relative or friend of the lunatic, and may make or cause to be made such inquiries as to the Court may seem necessary in the interests of the lunatic.

(Part III.—Judicial Inquisition as to Lunacy. Chapter V.—Proceedings in Lunacy outside Presidency-towns.)

Manager to furnish inventory and annual accounts.

76. (1) Every person appointed by the District Court or by the Collector to be manager of the estate of a lunatic shall, within six months from the date of his appointment, deliver in Court or to the Collector, as the case may be, an inventory of the immoveable property belonging to the lunatic and of all such money, or other moveable property, as he may receive on account of the estate, together with a statement of all debts due by or to the same.

(2) Every such manager shall also furnish to the Court or to the Collector annually, within three months of the close of the year of the era current in the district, an account of the property in his charge, exhibiting the sums received and disbursed on account of the estate and the balance remaining in his hands.

Proceeding if accuracy of inventory or accounts is impugned.

77. If any relative of the lunatic, or the Collector by petition to the Court, impugns the accuracy of the said inventory and statement, or of any annual account, the Court may summon the manager and inquire summarily into the matter and make such order thereon as it thinks fit; or the Court, at its discretion, may refer any such petition to any subordinate Court or to the Collector if the manager was appointed by the Collector.

Payment into public treasury and investment of proceeds of estate.

78. All sums received by a manager on account of any estate in excess of what may be required for the current expenses of the lunatic or of the estate, shall be paid into the public treasury on account of the estate and shall be invested from time to time in any of the securities specified in section 20 of the Indian Trusts Act, 1882, unless the Court or the Collector, II of 1882. as the case may be, for reasons to be recorded in writing, directs that such sums be in the interest of the lunatic otherwise invested or applied.

Relative may sue for an account.

79. Any relative of a lunatic may with the leave of the District Court sue for an account from any manager appointed under this Chapter, or from any such person after his removal from office or trust, or from his legal representative in case of his death, in respect of any estate then or formerly under his care or management or of any sums of money or other property received by him on account of such estate.

Removal of managers and guardians.

80. (1) The District Court, for any sufficient cause, may remove any manager appointed by it not being the Curator, and may appoint such Curator or any other fit person in his place, and may compel the person so removed to make over the property in his hands to his successor, and to account to such successor for all money received or disbursed by him.

(2) The Court may also for any sufficient cause, remove any guardian of the person of the lunatic appointed by it, and may appoint any other fit person in his place.

(3) The Collector, for any sufficient cause, may remove any manager of the estate of a lunatic or guardian of the person of a lunatic appointed by him, and may appoint any other fit person in place of such manager or guardian; and the District Court, on the application of the Collector, may

(Part III.—Judicial Inquisition as to Lunacy. Chapter V.—Proceedings in Lunacy outside Presidency-towns. Part IV.—Miscellaneous. Chapter VI.—Establishment of Asylums.)

compel any manager removed under this section to make over the property and all accounts in his hands to his successor and to account to such successor for all money received or disbursed by him.

81. The District Court may impose a fine not exceeding five hundred rupees on any manager of the estate of a lunatic who wilfully neglects or refuses to deliver his accounts or any property in his hands within the time fixed by the Court, and may realize such fine as if it were a sum due under a decree of the Court, and may also commit the recusant to the civil jail until he delivers such accounts or property.

82. (1) When any person has been found under this Chapter to be of unsound mind, and it is subsequently shown to the District Court that there is reason to believe that such unsoundness of mind has ceased, such Court may make an order for inquiring whether such person is still of unsound mind and incapable of managing himself and his affairs.

(2) The inquiry shall, as far as may be, be conducted in the same manner as is prescribed in this Chapter for an inquisition into the unsoundness of mind of an alleged lunatic, and if it is found that the unsoundness of mind has ceased, the Court shall order all proceedings in the lunacy to cease or to be set aside on such terms and conditions as to the Court may seem fit.

83. An appeal shall lie to the High Court from any order made by a District Court, under this Chapter.

PART IV.

Miscellaneous.

CHAPTER VI.

ESTABLISHMENT OF ASYLUMS.

84. The ¹[Provincial Government] may establish or license the establishment of asylums at such places as it thinks fit ²[if it is satisfied that provision has been or will be made for the curative treatment therein of persons suffering from mental diseases.]

³84A. If in any licensed asylum no provision for curative treatment has been made, or the ¹[Provincial Government] considers that the

¹ Subs. by the A. O. for "L. G."

² Ins. by the Indian Lunacy (Amendment) Act, 1922 (6 of 1922), s. 3.

³ Ins. by s. 4, *ibid.*

Penalty on manager for refusing to deliver accounts or property.

Proceedings in lunacy to cease or to be set aside if Court finds that the unsoundness of mind has ceased.

Provincial Government may establish or license the establishment of asylums.

Power to cancel licence if

(Part IV.—Miscellaneous. Chapter VI.—Establishment of Asylums. Chapter VII.—Expenses of Lunatics.)

provision for curative treatment is insufficient.

provision made is insufficient, the ¹[Provincial Government] may require the person in charge of the asylum to take such measures for making or supplementing such provision as it may deem necessary, and, if such person does not comply with the requisition within a reasonable time, the ¹[Provincial Government] may revoke the licence.]

Provision for admission of lunatics in asylums outside a province.

²[85. The Magistrates or Courts exercising jurisdiction in any province may send lunatics or any class of lunatics to any asylum situate in any other province in accordance with any general or special order³ of the ¹[Provincial Government] made in that behalf with the consent of the ¹[Provincial Government] of such other province.]

CHAPTER VII.

EXPENSES OF LUNATICS.

Payment of cost of maintenance in licensed asylums in certain cases by Government.

86. (1) When any lunatic is admitted to a licensed asylum under a reception order or an order under section 25, and no engagement has been taken from the friends or relatives of the lunatic or order made by the Court for the payment of expenses under the provisions of this Act, the cost of maintenance of such lunatic shall, subject to the provision of any law for the time being in force, be paid by the Government to the person in charge of such asylum.

(2) The paymaster of the military circle within which any asylum is situated shall pay to the officer in charge of such asylum the cost of maintenance of every lunatic received and detained therein under an order made under section 12.

Application of property in the possession of a lunatic found wandering.

87. Any money in the possession of a lunatic found wandering at large may be applied by the Magistrate towards the payment of the cost of maintenance of the lunatic or of any other expenses incurred on his behalf, and any moveable property found on the person of the lunatic may be sold by the Magistrate, and the proceeds thereof similarly applied.

Application to Civil Court for order for the payment of cost of maintenance out of the lunatic's estate, or by person bound to maintain him.

88. If a lunatic detained in an asylum on a reception order made under section 14, section 15 or section 17 has an estate applicable to his maintenance, or if any person legally bound to maintain such lunatic has the means to maintain him, the authority which made the reception order or any local authority liable for the cost of maintenance of such lunatic under any law for the time being in force may apply to the High Court or District Court within the local limits of the original jurisdiction of which the estate of the lunatic is situate or the person legally bound to maintain him resides, for an order for the payment of the cost of maintenance of the lunatic.

¹ Subs. by the A. O. for "L. G."

² Subs. by the Devolution Act, 1920 (38 of 1920), s. 2 and Sch. I, for the original section.

³ For notifications by the G. G. in C. under this section as it stood originally, see Gen. R. and O., Vol. IV, pp. 344-345.

⁴ Ss. 88 and 89 have been amended in their application to the Province of Bombay by Bom. Act 15 of 1936, s. 2.

(Part IV.—Miscellaneous. Chapter VII.—Expenses of Lunatics.)

89. (1) The Court shall inquire into the matter in a summary way, and on being satisfied that such lunatic has an estate applicable to his maintenance, or that any person is legally bound to maintain and has the means of maintaining such lunatic, may make an order for the recovery of the cost of maintenance of such lunatic, together with the costs of the application out of such estate or from such person. Order of Court and enforcement thereof.

(2) Such order shall be enforced in the same manner, and shall be of the same force and effect and subject to the same appeal as a decree made by the said Court in a suit in respect of the property or person therein mentioned.

¹[89A. (1) In computing the amount payable on account of the cost of maintenance of lunatics detained in any asylum for the cost of whose maintenance any Provincial Government is liable, charges may be included on account of the upkeep of the asylum and of the capital cost of establishment thereof. Fixation of cost of maintenance.

26 Geo. 5,
c. 2.

(2) In the case of any such lunatic under detention immediately before the ²commencement of Part III of the Government of India Act, 1935, the amount payable by any Provincial Government on account of the cost of his maintenance shall be determined in accordance with any general or special orders of the Governor-General in Council in force immediately before that date and applicable to his case.]

³[89B. (1) When under the provisions of this Act the cost of the maintenance of a lunatic is payable by the Government, then such cost shall be payable— Incidence of costs of maintenance payable by Government.

(a) in the case of a lunatic not domiciled in British India, by the ⁴[Provincial Government] of the province in which the reception order or the order under section 25, as the case may be, was made; and

(b) in the case of a lunatic domiciled in British India, by the ⁴[Provincial Government] of the province in which the lunatic has last resided for a period of five years before the reception order or the order under section 25, as the case may be, was made; or, if the lunatic has not been resident in any one province for such period, by the ⁴[Provincial Government] of the province in which such order was made.

5* * * * *

90. The liability of any relative or person to maintain any lunatic shall not be taken away or affected by any provision contained in this Act. Saving of liability of relatives to maintain lunatic.

¹ Subs. by the A. O. for the original s. 89A which was ins. by the Indian Lunacy (Amendment) Act, 1922 (6 of 1922), s. 5.

² Part III of the G. of I. Act, 1935, came into force on the 1st April, 1937.

³ Ins. by Act 6 of 1922, s. 5.

⁴ Subs. by the A. O. for "I. G."

⁵ Sub-section (2) rep. by the A. O.

(Part IV.—Miscellaneous. Chapter VIII.—Rules.)

CHAPTER VIII.

RULES.

Power of
Provincial
Government
to make
rules.

91. (1) ¹* * * The ²[Provincial Government] may make rules for all or any of the following purposes, namely :—

- (a) to prescribe forms for any proceeding under this Act other than a proceeding before a High Court which is or may hereafter be ³[constituted by His Majesty by Letters Patent] ;
- (b) to prescribe places of detention and regulate the care and treatment of persons detained under section 8 or section 16 ;
- (c) to regulate the ⁴[detention], care, treatment and discharge of criminal lunatics ;
- (d) to regulate the management of asylums and the care and custody of the inmates thereof and their transfer from one asylum to another ;
- (e) to regulate the transfer of criminal lunatics to asylums ;
- (f) to prescribe the procedure to be followed by District Courts and Magistrates before a lunatic is sent to any asylum established by Government ;
- (g) to prescribe the ⁵[Government asylums] within the province to which lunatics from any area or any class of lunatics shall be sent ;
- (h) to prescribe conditions subject to which asylums may be licensed ;
- (i) save as otherwise provided in this Act, generally to carry into effect the provisions of the Act.

(2) In making any rule under this section, the ⁶[Provincial Governments] may direct that a breach of it shall be punishable with fine which may extend to fifty rupees.

Publication
of rules.

92. All rules made under section 91 shall be published in the ⁷[Official Gazette], and shall thereupon have effect as if enacted in this Act.

¹ The words " Subject to the control of the G. G. in C." rep. by the Devolution Act, 1920 (38 of 1920), s. 2 and Sch. I.

² Subs. by the A. O. for " L. G."

³ Subs. by the A. O. for " established under the Indian High Courts Acts, 1861 to 1911 ".

⁴ Subs. by the Repealing and Amending Act, 1923 (11 of 1923), s. 2 and Sch. I for " confinement ".

⁵ Subs. by the A. O. for " asylums established by Govt."

⁶ Subs. by the A. O. for " Local Governments ".

⁷ Subs. by the A. O. for " local official Gazette ".

(Part IV.—Miscellaneous. Chapter IX.—Supplemental Provisions.)

CHAPTER IX.

SUPPLEMENTAL PROVISIONS.

93. Any person who—

- (a) otherwise than in accordance with the provisions of this Act receives or detains a lunatic or alleged lunatic in an asylum,
or
- (b) for gain detains two or more lunatics in any place not being an asylum,

Penalty for improper reception or detention of lunatic.

shall be punishable with imprisonment which may extend to two years or with fine or with both.

7 of 1898.

94. The provisions of Chapter XLII of the Code of Criminal Procedure, 1898, shall, so far as may be, apply to bonds taken under this Act.

Provision as to bonds.

95. (1) When any sum is payable in respect of pay, pension, gratuity, or other similar allowance to any person ¹[by the Secretary of State or any Government in British India] and the person to whom the sum is payable is certified by a Magistrate to be a lunatic, the Government officer under whose authority such sum would be payable if the payee were not a lunatic may pay so much of the said sum as he thinks fit to the person having charge of the lunatic, and may pay the surplus, if any, or such part thereof, as he thinks fit for the maintenance of such members of the lunatic's family as are dependent on him for maintenance.

Pension of lunatic payable by Government.

(2) ²[The Secretary of State or, as the case may be, the Government concerned] shall be discharged of all liability in respect of any amounts paid in accordance with this section.

96. Subject to any rules, the forms set forth in the First Schedule, with such variation as the circumstances of each case may require, shall be used for the respective purposes therein mentioned, and if used shall be sufficient.

Use of forms in Schedule.

97. No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done under this Act.

Protection to persons acting under Act.

¹ Subs. by the A. O. for "by Govt."

² Subs. by the A. O. for "The Secretary of State for India in Council".

(Part IV.—Miscellaneous. Chapter IX.—Supplemental Provisions.)

Power to
give effect to
warrants and
orders of
certain
Courts
outside
British
India.

98. Any officer in charge of an asylum may give effect to any order or warrant for the reception and detention of any lunatic made or issued by any Court or tribunal beyond the limits of British India in the exercise of jurisdiction conferred by His Majesty or ¹[the Central Government or the Crown Representative or by the law of Burma.]

Power to
make rules
for reception
of lunatics
received
from outside
British
India.

99. The ²[Provincial Government] may make rules³ regulating the procedure for the reception and detention in asylums in ⁴[the province] of lunatics whose reception and detention are provided for by section 98.

Orders under
repealed
Acts.

100. (1) In the case of orders made before the commencement of this Act under section 7 of the ⁵Indian Lunatic Asylums Act, 1858, for the reception of persons into an asylum, the persons who signed the order shall have all the powers and be subject to the obligations by this Act conferred or imposed upon the petitioner for a reception order, and the provisions of this Act relating to persons upon whose petition a reception order was made shall apply in the case of a person who has signed an order, under section 7 of the ⁵Indian Lunatic Asylums Act, 1858, before the commencement of this Act as if the order had been made after the commencement of this Act upon a petition presented by him. XXXVI of 1858.

(2) All orders for the detention of lunatics made and all undertakings given under any enactment hereby repealed shall have the same force and effect as if they had been made or given under this Act and by or to the authority empowered thereby in such behalf.

Ranchi
European
Mental
Hospital.

⁶[100A. The powers conferred by this Act upon the Provincial Government shall, in relation to the Ranchi European Mental Hospital, be powers of the Central Government.]

101. [Repeal of enactments.] Rep. by the Second Repealing and Amending Act, 1914 (XVII of 1914), s. 3 and Sch. II.

¹ Subs. by the A. O. for "the G. G. in C."

² Subs. by the A. O. for the words "L. G." which were subs. by the Devolution Act, 1920 (38 of 1920), s. 2 and Sch. I, for "G. G. in C."

³ For rules made by the G. G. in C. under this section as it originally stood, see Gen. R. and O., Vol. IV, pp. 345-352.

⁴ Subs. by Act 38 of 1920, s. 2 and Sch. I, for "British India".

⁵ Rep. by the Indian Lunacy Act, 1912 (4 of 1912).

⁶ Ins. by the A. O.

(Schedule I.—Forms.)

SCHEDULE I.

FORMS.

(See section 96.)

FORM 1.

Application for Reception Order.

(See sections 5 and 6.)

In the matter of A. B. [1], residing at , by occupation , son of
; a person alleged to be a lunatic.

To Presidency Magistrate, for
[or District Magistrate of
, or Sub-Divisional Magistrate of
or Magistrate specially empowered under Act IV of 1912 for].
The petition of C. D. [1], residing at , by occupation
, son of , in the town of [or sub-division
of in the district of].

1. I am [2] years of age.

2. I desire to obtain an order for the reception of A. B. as a lunatic
in the asylum of situate at [3].

3. I last saw the said A. B. at on the [4] day of

4. I am the [5] of the said A. B.

[or if the petitioner is not a relative of the patient state as follows.]

I am not a relative of the said A. B. The reasons why this petition is
not presented by a relative are as follows : [State them].

The circumstances under which this petition is presented by me are as
follows : [State them].

5. The persons signing the medical certificates which accompany the
petition are [6].

[1] Full name, caste and titles.

[2] Enter the number of completed years. The petitioner must be at least eighteen or
twenty-one whichever is the age of majority under the law to which the petitioner is subject.

[3] Insert full description of the name and locality of the asylum or the name, address
and description of the person in charge of the asylum.

[4] A day within 14 days before the date of the presentation of the petition is requisite.

[5] Here state the relationship with the patient.

[6] Here state whether either of the persons signing the medical certificates is a relative,
partner or assistant of the lunatic or of the petitioner and, if a relative of either, the exact re-
lationship.

(Schedule I.—Forms.)

6. A statement of particulars relating to the said A. B. accompanies this petition.

7. [*If that is the fact.*] An application for an inquiry into the mental capacity of the said A. B. was made to the on the and a certified copy of the order made on the said petition is annexed hereto.

[*Or if that is the fact.*]

No application for an inquiry into the mental capacity of the said A. B. has been made previous to this application.

The petitioner therefore prays that a reception order may be made in accordance with the foregoing statement.

(Sd.) C. D.

The statements contained or referred to in paragraphs are true to my knowledge; the other statements are true to my information and belief.

(Sd.) C. D.

Dated

Statement of particulars.

[*If any of the particulars in this statement is not known, the fact to be so stated.*]

The following is a statement of particulars relating to the said A. B.

Name of patient at length.

Sex and age.

Married, single or widowed.

Previous occupation.

Caste and religious belief, as far as known.

Residence at or immediately previous to the date hereof.

Names of any near relatives to the patient who are alive.

Whether this is first attack of lunacy.

Age (if known) on first attack.

When and where previously under care and treatment as a lunatic.

Duration of existing attack.

Supposed cause.

Whether the patient is subject to epilepsy.

Whether suicidal.

Whether the patient is known to be suffering from phthisis or any form of tubercular disease.

Whether dangerous to others, and in what way.

Whether any near relative (stating the relationship) has been afflicted with insanity.

(Schedule I.—Forms.)

Whether the patient is addicted to alcohol, or the use of opium, ganja, charas, bhang, cocaine or other intoxicant.

[The statements contained or referred to in paras. are true to my knowledge. The other statements are true to my information and belief.]

[Signature by person
making the statement.]

FORM 2.

Reception Order on Petition.

(See sections 7, 10.)

I, the undersigned E. F., being a Presidency Magistrate of [or the District Magistrate of or the Sub-Divisional Magistrate of or a Magistrate of the first class specially empowered by Government to perform the functions of a Magistrate under Act IV of 1912] upon the petition of C. D. of [1] in the matter of A. B., [1] a lunatic, accompanied by the medical certificates of G. H., a medical officer, and of J. K., a medical practitioner [or medical officer], under the said Act, hereto annexed, hereby authorise you to receive the said A. B. into your asylum. And I declare that I have [or have not] personally seen the said A. B. before making this order.

(Sd.) E. F.

(Designation as above.)

To[2]

FORM 3.

Medical Certificate.

(See sections 18, 19.)

In the matter of A. B. of [3] in the town of [or the sub-division of in the district of] an alleged lunatic.

I, the undersigned C. D., do hereby certify as follows :—

1. I am a gazetted medical officer [or a medical practitioner declared by Government a holder of [4] [or declared by 1[Provincial Government] to be a medical to be medical officer under Act IV of 1912] and I am in the actual practice of the practitioner under Act IV of 1912] medical profession.

[1] Address and description.

[2] To be addressed to the officer or person in charge of the asylum.

[3] Insert residence of patient.

[4] Insert qualification to practise medicine and surgery registrable in the United Kingdom.

¹ Subs. by the A. O. for "L. G."

(Schedule I.—Forms.)

2. On the day of 19 at [1] in the ^{town}_{village} of [or the sub-division of in the district of] [separately from any other practitioner] [2], I personally examined the said A. B. and came to the conclusion that the said A. B. is a lunatic and a proper person to be taken charge of and detained under care and treatment.

3. I formed this conclusion on the following grounds, viz. :—

(a) Facts indicating insanity observed by myself, viz. :—

(b) Other facts (if any) indicating insanity communicated to me by others, viz. :—*Here state the information and from whom.*

(Sd.) C. D.

(Designation as above.)

FORM 4.

Reception Order in case of Lunatic Soldier.

(See section 12.)

Whereas it appears to me that A. B., a European, subject to the Army Act, who has been declared a lunatic in accordance with the provisions of the military regulations, should be removed to an asylum, I do hereby authorise you to receive the said A. B. into your asylum.

(Sd.) E. F.

(Administrative Medical Officer.)

To[3]

FORM 5.

Reception order in case of wandering or dangerous lunatics or lunatics not under proper control or cruelly treated (sent to an asylum established by Government).

(See sections 14, 15, 17.)

I, C. D., Presidency Magistrate of [or Commissioner of Police for] [or the District Magistrate of or the Sub-divisional Magistrate of or a Magistrate specially empowered by Government under Act IV of 1912] having caused A. B. to be examined

[1] Insert place of examination.

[2] Omit this where only one certificate is required.

[3] To be addressed to the person in charge of an asylum duly authorised by Government to receive lunatic Europeans subject to the Army Act.

(Schedule I.—Forms.)

by E. F., a Medical Officer under the Indian Lunacy Act, 1912, and being satisfied that A. B. [*describing him*] is a lunatic who was wandering at large [*or is a person dangerous by reason of lunacy*] [*or is a lunatic not under proper care and control or is cruelly treated or neglected by the person having the care or charge of him*] and a proper person to be taken charge of and detained under care and treatment, hereby direct you to receive the said A. B. into your asylum.

(Sd.) C. D.

(Designation as above.)

Dated the

To the Officer in charge of the asylum at

FORM 6.

Same when sent to a licensed asylum.

I, C. D., [*as above down to "care and treatment"*] and being satisfied with the engagement entered into in writing by G. H. of [*here insert address and description*] who has desired that the said A. B. may be sent to the asylum at [*here insert description of asylum and name of the person in charge*] to pay the cost of maintenance of the said A. B., in the said asylum, hereby authorize you to receive the said A. B. into your asylum.

(Sd.) C. D.

(Designation as above.)

Dated the

To the person in charge of the asylum at

FORM 7.

*Bond on the making over of a lunatic to the care of relative or friend.**(See sections 14, 15, 17.)*

Whereas A. B., son of , inhabitant of , has been brought up before C. D., a Presidency Magistrate for the town of [*or Commissioner of Police for*] [*or the* ^{District} Sub-Divisional Magistrate of , or a Magistrate of the first class specially empowered under

(Schedule I.—Forms.)

Act IV of 1912] and is a lunatic who is believed to be dangerous [or deemed to be a lunatic who is not under proper care and control or is cruelly treated or neglected by the person having the charge of him] and whereas I, E. F., son of , inhabitant of , have applied to the Magistrate [or Commissioner of Police], that the said A. B. may be delivered to my care :

I, E. F., abovenamed hereby bind myself that on the said A. B. being made over to my care, I will have the said A. B. properly taken care of and prevented from doing injury to himself or to others : and in case of my making default therein, I hereby bind myself to forfeit to His Majesty the King-Emperor of India, the sum of rupees .

Dated this day of 19 .

(Sd.) E. F.

(Where a bond with sureties is to be executed add)—We do hereby declare ourselves sureties for the abovenamed E. F. that he will, on the aforesaid A. B. being made over to his care, have the said A. B. properly taken care of and prevented from doing injury to himself or to others ; and in case of the said E. F. making default therein, we bind ourselves, jointly and severally, to forfeit to His Majesty the King-Emperor of India, the sum of rupees .

Dated this day of 19 .

(Signature.)

FORM 8.

Bond on the discharge of a lunatic from an asylum on the undertaking of relative or friend to take due care.

(See section 33.)

Whereas A. B., son of , inhabitant of , is a lunatic who is now detained in the asylum at under an order made by C. D., a Presidency Magistrate for the town of [or Commissioner of Police for] [or the ^{District} Sub-Divisional Magistrate of , or a Magistrate of the first class specially empowered under Act IV of 1912] under section 14 [or section 15] of Act IV of 1912, and whereas I, E. F., son of , inhabitant of , have applied to the said Magistrate [or Commissioner of Police] that the said A. B. may be delivered to my care and custody :

I hereby bind myself that on the said A. B. being made over to my care and custody, I will have him properly taken care of and prevented from

(Schedule I.—Forms.)

1912 : Act VII.] *Bengal, Bihar and Orissa and Assam Laws.*

doing injury to himself or to others ; and in case of my making default therein, I hereby bind myself to forfeit to His Majesty the King-Emperor of India the sum of rupees .

Dated this day of 19 .

(Sd.) E. F.

(Where a bond with sureties is to be executed add)—We do hereby declare ourselves sureties for the abovenamed E. F. that he will, on the aforesaid A. B. being delivered to his care and custody, have the said A. B. properly taken care of and prevented from doing injury to himself or to others ; and in case of the said E. F. making default therein, we bind ourselves, jointly and severally, to forfeit to His Majesty the King-Emperor of India, the sum of rupees .

Dated this day of 19 .

(Signature.)

SCHEDULE II.—[ENACTMENTS REPEALED.] Rep. by the Second Repealing and Amending Act, 1914 (XVII of 1914), s. 3 and Sch. II.

THE BENGAL, BIHAR AND ORISSA AND ASSAM LAWS ACT,
1912.

ACT No. VII OF 1912.¹

[26th March, 1912.]

An Act to make certain provisions regarding the application of the law in force in the Presidency of Fort William in Bengal, the Province of Bihar and Orissa and the Province of Assam.

WHEREAS a Governor and an Executive Council have been appointed for the Presidency of Fort William in Bengal ;

AND WHEREAS, by Proclamation² published under Notification No. 290, dated the twenty-second day of March, 1912, the Governor General in Council, with the sanction of His Majesty, has been pleased to declare and appoint that, on and from the first day of April, 1912, the territory mentioned in Schedule A shall be and continue subject to the said Presidency of Fort William in Bengal ;

¹ For Proceedings in Council, see Gazette of India, 1912, Part VI, pp. 594 to 596.

Notwithstanding anything contained in this Act, the territories specified in the Schedule to the Malkharoda and Gaontia Villages Laws Act, 1923 (22 of 1923), shall not be deemed to be included within the Province of Bihar and Orissa, see s. 2 of the latter Act.

² See the Gazette of India, Extraordinary of the 22nd March, 1912.

AND WHEREAS, by Proclamation¹ published under Notification No. 289, dated the twenty-second day of March, 1912, the Governor General, with the sanction of His Majesty, has been pleased to constitute the territory mentioned in Schedule B to be, for the purposes of the Indian Councils Act, 1861², a Province to which the provisions of that Act touching the making of Laws and Regulations for the peace and good government of the Presidencies of Fort St. George and Bombay shall be applicable, and to direct that the said Province shall be called the Province of Bihar and Orissa, and further to appoint a Lieutenant-Governor of that Province ;

AND WHEREAS, by Proclamation¹ published under Notification No. 291, dated the twenty-second day of March, 1912, the Governor General in Council, with the sanction and approbation of the Secretary of State for India, has been pleased to take under his immediate authority and management the territory mentioned in Schedule C, which was formerly included within the Province of Eastern Bengal and Assam and to form the same into a Chief Commissionership, to be called the Chief Commissionership of Assam, and further to appoint a Chief Commissioner therefor ;

AND WHEREAS it is expedient to make certain provisions regarding the application of the law in force in the territories affected by the said Proclamations ;

It is hereby enacted as follows :—

Short title
and com-
mencement.

1. (1) This Act may be called the Bengal, Bihar and Orissa and Assam Laws Act, 1912 ; and

Saving of
territorial
application
of enact-
ments.

(2) It shall come into force on the first day of April, 1912.

2. The Proclamations referred to in the preamble shall not be deemed to have effected any change in the territorial application of any enactment, notwithstanding that such enactment may be expressed to apply or extend to the territories for the time being under a particular administration.

Construction
of certain
references
in enact-
ments in
force in
territory
mentioned
in Schedules
A, B and C.

3. All enactments made by any authority in British India, and all notifications, orders, schemes, rules, forms and by-laws issued, made or prescribed under such enactments, which, immediately before the commencement of this Act, were in force in, or prescribed for, any of the territory mentioned in Schedule A, Schedule B or Schedule C, shall, in their application to that territory, be construed as if references therein to the authorities, territory or Gazettes mentioned in column 1 of Schedule D were references to the authorities, territory or Gazettes respectively mentioned or referred to opposite thereto in column 2 of that Schedule :

3* * * *

4. [Constitution of Board of Revenue in Bihar and Orissa.] Rep. by the Bihar and Orissa Board of Revenue Act, 1913 (B. and O. Act I of 1913), s. 7 and Sch. I.

¹ See the Gazette of India Extraordinary of the 22nd March, 1912.

² Rep. and re-enacted by the Government of India Act.

³ The proviso to s. 3 rep. by the Devolution Act, 1920 (38 of 1920), s. 2 and Sch. I.

5. For the purpose of facilitating the application to the territory, or any part thereof, mentioned in Schedule A, Schedule B or Schedule C of any enactment passed before the commencement of this Act, or of any notification, order, scheme, rule, form or by-law made under any such enactment,—

Powers of Courts and Provincial Governments for facilitating application of enactments.

(a) any Court may, subject to the other provisions of this Act, construe the enactment, notification, order, scheme, rule, form or by-law with such alterations, not affecting the substance, as may be necessary or proper to adapt it to the matter before the Court ; and

(b) the ¹[Provincial Government] may, by notification in the ²[Official Gazette], direct by what officer any authority or power shall be exerciseable ; and any such notification shall have effect as if enacted in this Act.

6. Nothing in this Act shall affect any proceeding which, at the commencement thereof, is pending in or in respect of any of the territory mentioned in Schedule A, Schedule B or Schedule C ; and every such proceeding shall be continued as if this Act had not been passed.

Pending Proceedings.

7 and 8. [*Amendment of Acts. Repeal.*] *Rep. by the Repealing Act, 1938 (I of 1938), s. 2 and Sch.*

³[9. References in this Act, by whatever form of words, to Indian laws in force immediately before the commencement of this Act shall, after the commencement of Part III of the Government of India Act, 1935, be construed as references to those laws as adapted and modified under section 293 of that Act.]

Application to adaptations and modifications made under s. 293 of the Government of India Act, 1935.

26 Geo. 5,
c. 2.

SCHEDULE A.

(See sections 3, 5 and 6.)

THE PRESIDENCY OF FORT WILLIAM IN BENGAL.

Part I.

The Chittagong Division, comprising the districts of Chittagong, the Chittagong Hill-tracts, Noakhali and Tippera ;

the Dacca Division, comprising the districts of Bakarganj, Dacca, Faridpur and Mymensingh ;

the Rajshahi Division, comprising the districts of Bogra, Dinajpur, Jalpaiguri, Malda, Pabna, Rajshahi and Rangpur.

Part II.

The Burdwan Division, comprising the districts of Bankura, Birbhum, Burdwan, Hooghly, Howrah and Midnapur ;

¹ Subs. by the A. O. for "L. G."

² Subs. by the A. O. for "local official Gazette".

³ Ins. by the A. O.

the Presidency Division, comprising the town of Calcutta and the districts of Jessore, Khulna, Murshidabad, Nadia and the 24-Parganas ; and the district of Darjeeling.

SCHEDULE B.

THE PROVINCE OF BIHAR AND ORISSA.

The districts of Bhagalpur, Monghyr, Purnea and the Sonthal Parganas, in the Bhagalpur Division ;

the Patna Division, comprising the districts of Gaya, Patna and Shahabad ;

the Tirhut Division, comprising the districts of Champaran, Darbhanga, Muzaffarpur and Saran ;

the Chota Nagpur Division, comprising the districts of Hazaribagh, Manbhum, Palamau, Ranchi and Singhbhum ; and

the Orissa Division, comprising the districts of Angul, Balasore, Cuttack, Puri and Sambalpur.¹

SCHEDULE C.

THE PROVINCE OF ASSAM.

The Assam Valley Districts Division, comprising the districts of Darrang, Garo Hills, Goalpara, Kamrup, Lakhimpur, Nowgong and Sibsagar ; and

the Surma Valley and Hill Districts Division, comprising the districts of Cachar, Khasi and Jaintia Hills, Lushai Hills, Naga Hills and Sylhet.

SCHEDULE D.

(See section 3.)

Part I.—Construction of enactments, etc., in force in the territory mentioned in Schedule A (the Presidency of Fort William in Bengal).

1	2
References.	Constructions.
1. The ² [Local or Provincial Government] of Bengal.	} The ³ [Provincial Government] of ⁴ * Bengal.
2. The ² [Local or Provincial Government] of Eastern Bengal and Assam.	

¹ As regards the district of Sambalpur, see the Malkharoda and Gaontia Villages Laws Act, 1923 (22 of 1923).

² Subs. by the A. O. for "L. G."

³ Subs. by the A. O. for "G. in C."

⁴ The words "Fort William in" rep. by the A. O.

SCHEDULE D—*contd.*

Part I.—Construction of enactments, etc., in force in the territory mentioned in Schedule A (the Presidency of Fort William in Bengal)—concl'd.

1	2
References.	Constructions.
3. The Board of Revenue for Eastern Bengal and Assam.	The Board of Revenue for Bengal.
1* * * * *	
6. All officers and official bodies not mentioned in the foregoing clauses 2 to 5 (except the Treasurer of Charitable Endowments) whose authority extended, immediately before the commencement of this Act, over the Province of Eastern Bengal and Assam generally, inclusive of the territory mentioned in Part I of Schedule A.	(a) The respective officers and official bodies who immediately before the commencement of this Act exercised similar functions in the Province of Bengal; or (b) such other officers or official bodies, respectively, as the ² [Provincial Government] of ³ * Bengal may, by notification in the ⁴ [Official Gazette], direct.
7. The local official Gazette (English or Vernacular, as the case may be) of the Government of Eastern Bengal and Assam.	The ⁴ [Official Gazette] (English or Vernacular, as the case may be) of the Government of Bengal.

Part II.—Construction of enactments, etc., in force in the territory mentioned in Schedule B (the Province of Bihar and Orissa).

1	2
References.	Constructions.
8. The ⁵ [Local or Provincial Government] of Bengal.	The ⁵ [Provincial Government] of Bihar and Orissa.
9. The ⁵ [Local or Provincial Government] of the Central Provinces.	
10. The Board of Revenue for Bengal . . .	The Board of Revenue for Bihar and Orissa.
11* * * * *	
13. The Court of Wards of the Central Provinces.	
14. The Superintendent of Government Wards in the Central Provinces.	

¹ Items 4, 5, 11 and 12 relating to the Chief Controlling Revenue-authority and Chief Revenue-authority, rep. by the A. O. See now definition in the General Clauses Act, 1897 (10 of 1897), s. 3 (9a).

² Subs. by the A. O. for "G. in C."

³ The words "Fort William in" rep. by the A. O.

⁴ Subs. by the A. O. for "local official Gazette."

⁵ Subs. by the A. O. for "L. G."

SCHEDULE D—*contd.**Part II.—Construction of enactments, etc., in force in the territory mentioned in Schedule B (the Province of Bihar and Orissa)—concl'd.*

1	2
References.	Constructions.
15. The Judicial Commissioner of the Central Provinces.	The High Court of Judicature ¹ [in Calcutta].
16. All officers and official bodies not mentioned in the foregoing clauses 8 to 15 (except the Treasurer of Charitable Endowments) whose authority extended, immediately before the commencement of this Act, over the Province of Bengal generally, inclusive of the territory mentioned in Schedule B.	Such officers or official bodies, respectively, as the ² [Provincial Government] may, by notification in the ³ [Official Gazette], direct.
17. The local official Gazette (English or Vernacular, as the case may be) of the Government of Bengal or the Chief Commissionership of the Central Provinces.	The ⁴ [Official Gazette] (English or Vernacular, as the case may be) of the Government of Bihar and Orissa.

Part III.—Construction of enactments, etc., in force in the territory mentioned in Schedule C (the Province of Assam).

1	2
References.	Constructions.
18. The ² [Local or Provincial Government] of Bengal.	The ⁵ [Provincial Government] of Assam.
19. The ² [Local or Provincial Government] of Eastern Bengal and Assam.	
20. The Board of Revenue for Bengal . . .	
21. The Board of Revenue for Eastern Bengal and Assam.	
* * * * *	
24. All officers and official bodies not mentioned in the foregoing clauses 18 to 23 (except the Treasurer of Charitable Endowments) whose authority extended, immediately before the commencement of this Act, over the Province of Eastern Bengal and Assam generally, inclusive of the territory mentioned in Schedule C.	Such officers or official bodies, respectively, as the ⁶ [Provincial Government] of Assam may, by notification in the ⁷ [Official Gazette], direct.

¹ Subs. by the A. O. for "at Fort William in Bengal".² Subs. by the A. O. for "L. G."³ Subs. by the A. O. for "local official Gazette".⁴ Items 22 and 23 relating to the Chief Controlling Revenue-authority and Chief Revenue-authority rep. by the A. O.: see now definition in the General Clauses Act, 1897 (10 of 1897), s. 3 (9a).⁵ Subs. by the A. O. for "Chief Commissioner".

SCHEDULE D—concl'd.

Part III.—Construction of enactments, etc., in force in the territory mentioned in Schedule C (the Province of Assam)—concl'd.

1	2
References.	Constructions.
25. The Chief Commissionership of Assam .	The territory mentioned in Schedule C.
26. The local official Gazette (English or Vernacular, as the case may be) of the Government of Bengal or the Government of Eastern Bengal and Assam.	The ¹ [Official Gazette] (English or Vernacular, as the case may be) of the Chief Commissionership of Assam.

SCHEDULE E.—Rep. by the Repealing Act, 1938 (I of 1938), s. 2 and Sch.

THE WILD BIRDS AND ANIMALS PROTECTION ACT, 1912.

ACT NO. VIII OF 1912.²

[18th September, 1912.]

An Act to make better provision for the protection and preservation of certain wild birds and animals.

WHEREAS it is expedient to make better provision for the protection and preservation of certain wild birds and animals; It is hereby enacted as follows :—

1. (1) This Act may be called the Wild Birds and Animals Protection Act, 1912; and

Short title
and extent.

(2) It extends to the whole of British India, including British Baluchistan, the Sonthal Parganas and the Pargana of Spiti.

2. (1) This Act applies, in the first instance, to the birds and animals specified in the Schedule, when in their wild state.

Application
of Act.

(2) The ³[Provincial Government] may, by notification⁴ in the ¹[Official Gazette], apply the provisions of this Act to any kind of wild bird or animal,

¹ Subs. by the A. O. for "local official Gazette".

² For Statement of Objects and Reasons, see Gazette of India, 1912, Pt. V, p. 2; for Report of Select Committee, see *ibid.*, 1912, Pt. V, p. 173; and for Proceedings in Council, see *ibid.*, 1912, Pt. VI, pp. 57 and 691.

The Act has been amended in its application to the U. P. by the Wild Birds and Animals Protection (U. P. Amendment) Act, 1934 (U. P. 13 of 1934), and in its application to the C. P. by the Wild Birds and Animals Protection (C. P. Amendment) Act, 1935 (C. P. 27 of 1935).

³ Subs. by the A. O. for "L. G."

⁴ For such a notification in Coorg, see Coorg District Gazette, 1913, Pt. I, p. 185; in the U. P., see U. P. Gazette, 1914, Pt. I, p. 169; and in Madras, see Mad. R. and O., 1923, Vol. I, p. 439.

other than those specified in the Schedule, which, in its opinion, it is desirable to protect or preserve.

Closetime.

3. The ¹[Provincial Government] may, by notification² in the ³[Official Gazette], declare the whole year or any part thereof to be a close time throughout the whole or any part of its territories for any kind of wild bird or animal to which this Act applies, or for female or immature wild birds or animals of such kind ; and, subject to the provisions hereinafter contained, during such close time, and within the areas specified in such notification, it shall be unlawful—

- (a) to capture any such bird or animal, or to kill any such bird or animal which has not been captured before the commencement of such close time ;
- (b) to sell or buy, or offer to sell or buy, or to possess, any such bird or animal which has not been captured or killed before the commencement of such close time, or the flesh thereof ;
- (c) if any plumage has been taken from any such bird captured or killed during such close time, to sell or buy, or to offer to sell or buy, or to possess, such plumage.

Penalties.

4. (1) Whoever does or attempts to do, any act in contravention of section 3, shall be punishable with fine which may extend to fifty rupees.

(2) Whoever, having already been convicted of an offence under this section, is again convicted thereunder shall, on every subsequent conviction, be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to one hundred rupees, or with both.

Confiscation.

5. (1) When any person is convicted of an offence punishable under this Act, the convicting Magistrate may direct that any bird or animal in respect of which such offence has been committed, or the flesh or any other part of such bird or animal, shall be confiscated.

(2) Such confiscation may be in addition to the other punishment provided by section 4 for such offence.

Cognizance of offences.

6. No Court inferior to that of a Presidency Magistrate or a Magistrate of the second class shall try any offence against this Act.

Power to grant exemption.

7. Where the ¹[Provincial Government] is of opinion that, in the interests of scientific research, such a course is desirable, it may grant to any person a license, subject to such restrictions and conditions as it may impose, entitling the holder thereof to do any act which is by section 3 declared to be unlawful.

Savings.

8. Nothing in this Act shall be deemed to apply to the capture or killing of a wild animal by any person in defence of himself or any other person, or to the capture or killing of any wild bird or animal in *bonâ fide* defence of property.

9. [Repeal.] *Rep. by the Second Repealing and Amending Act, 1914 (XVII of 1914), s. 3 and Sch. II.*

¹ Subs. by the A. O. for "L. G."

² For such a notification in Madras, see Mad. R. and O., 1923, Vol. I, p. 439.

³ Subs. by the A. O. for "local official Gazette".

THE SCHEDULE.

- (i) Bustards, ducks, floricans, jungle fowl, partridges, peafowl, pheasants, pigeons, quail, sand-grouse, painted snipe, spur-fowl, wood-cock, herons, egrets, rollers, and king-fishers.
- (ii) Antelopes, asses, bison, buffaloes, deer, gazelles, goats, hares, oxen, rhinoceroses¹ and sheep.

THE DELHI LAWS ACT, 1912.

ACT No. XIII OF 1912.²

[18th September, 1912.]

An Act to provide for the application of the law in force in the Province of Delhi and for the extension of other enactments thereto.

WHEREAS by Proclamation³ published in Notification No. 911, dated the seventeenth day of September, 1912, the Governor General in Council, with the sanction and approbation of the Secretary of State for India, has been pleased to take under his immediate authority and management the territory mentioned in Schedule A, which was formerly included within the Province of the Punjab, and to provide for the administration thereof by a Chief Commissioner as a separate Province to be known as the Province of Delhi ;

And whereas it is expedient to provide for the application of the law in force in the said territory, and for the extension of other enactments thereto ; It is hereby enacted as follows :—

1. (1) This Act may be called the Delhi Laws Act, 1912 ; and
- (2) It shall come into force on the first day of October, 1912.
2. The Proclamation referred to in the preamble shall not be deemed to have effected any change in the territorial application of any enactment notwithstanding that such enactment may be expressed to apply or extend to the territories for the time being under any particular administration.
3. All enactments made by any authority in British India and all notifications, orders, schemes, rules, forms and by-laws issued, made or prescribed under such enactments which immediately before the commencement of this Act were in force in, or prescribed for, any of the territory mentioned in Schedule A, shall in their application to that territory be construed

Short title
and com-
mencement.

Saving of
territorial
application
of enact-
ments.

Construc-
tion of
certain
enactments
in force in
the territories
mentioned in
Schedule A.

¹ In the application of the Act to Bengal, the word "rhinoceroses" has been rep. by the Bengal Rhinoceros Preservation Act, 1932 (Ben. 8 of 1932), s. 7.

² The Bill which became Act 13 of 1912 was introduced and passed at the same meeting of the Council ; no Statement of Objects and Reasons was therefore published.

For Proceedings in Council relating to the Bill, see Gazette of India, 1912, Pt. VI, p. 695.

³ See Gazette of India, 1912, Extraordinary, p. 17.

as if references therein to the authorities, or gazette mentioned in column I of Schedule B were references to the authorities, or gazette respectively mentioned or referred to opposite thereto in column 2 of that Schedule :

1* * * * *

Powers of
Courts and
Provincial
Government
for purposes
of facilitating
application
of enact-
ments.

4. For the purpose of facilitating the application to the territory mentioned in Schedule A or any part thereof of any enactment passed before the commencement of this Act or of any notification, order, scheme, rule, form or by-law issued, made or prescribed under any such enactment—

(1) any Court may, subject to the other provisions of this Act, construe the enactment, notification, order, scheme, rule, form or by-law with such alterations not affecting the substance as may be necessary or proper to adapt it to the matter before the Court, and

(2) the ²[Provincial Government] may, subject to the other provisions of this Act, by notification³ in the ⁴[Official Gazette] direct by what Officer any power or duty shall be exercised or discharged, and any such notification shall have effect as if enacted in this Act.

Vesting of
powers of
separate
Officers in
single Officer.

5. (1) A notification issued under section 4, sub-section (2), may direct that any powers or duties vested in separate Officers may be consolidated and vested in, and discharged by, a single Officer.

(2) Where by such a notification appellate powers are consolidated and vested in a single Officer, the period of limitation for the consolidated appeal shall be the longest period provided in the case of an appeal to any of the Officers whose powers are so consolidated.

Pending
proceedings.

6. Nothing in this Act shall affect any proceeding which at the commencement thereof is pending in respect of any of the territory mentioned in Schedule A, and every such proceeding shall be continued as if this Act had not been passed :

Provided that all proceedings which at the commencement of this Act are pending before the Commissioner of the Division or any other authority within the territory mentioned in Schedule A shall be transferred to, and disposed of by, such authorities in the Province of Delhi as the ²[Provincial Government] may, by notification⁵ in the ⁴[Official Gazette], direct.

¹ Proviso to s. 3 rep. by the A. O.

² Subs. by the A. O. for "L. G."

³ For such notification as to appellate powers of the Commissioner and Financial Commissioner under the Punjab Tenancy Act, 1887 (Punjab 16 of 1887), and Punjab Land Revenue Act, 1887 (Punjab 17 of 1887), see *Gazette of India*, 1912, Pt. I, p. 1104, and as Registrar of Co-operative Societies, see *ibid.*, p. 1105.

⁴ Subs. by the A. O. for "Gazette of India".

⁵ For such a notification, see *ibid.*

7. The ¹[Provincial Government] may, by notification² in the ³[Official Gazette], extend with such restrictions and modifications as ⁴[it] thinks fit to ⁵[the Province of Delhi] or any part thereof, any enactment which is in force in any part of British India at the date of such notification.

Power to extend enactments in force in other parts of British India with modifications and restrictions.

SCHEDULE A.

(See section 3.)

THE PROVINCE OF DELHI.⁶

That portion of the District of Delhi comprising the Tahsil of Delhi and the police station of Mahrauli.

SCHEDULE B.

(See section 3.)

1	2
Reference.	Construction.
7* * *	
2. The ⁸ [Provincial Government] of the Punjab.	
7* * *	
5. The Chief Customs Authority . . .	
6. The Financial Commissioner . . .	
7. The Commissioner of Revenue . . .	The ¹⁰ [Provincial Government] of Delhi.
8. The Commissioner of the Division . . .	
9. The Commissioner . . .	
10. The Chief Secretary to Government . . .	
11. A Secretary to Government or to the ⁹ [Provincial Government.]	

¹ Subs. by the A. O. for "G. G. in C."

² For such notifications see Gen. R. and O., Vol. IV, pp. 379-387.

³ Subs. by the A. O. for "Gazette of India".

⁴ Subs. by the A. O. for "he".

⁵ Subs. by the Delhi Laws Act, 1915 (7 of 1915), s. 7, for "the territory mentioned in Schedule A".

⁶ 65 villages were subsequently included in the Province of Delhi by proclamation published in Notification No. 984-C., dated 22nd February 1915, see Gazette of India, 1915, Pt. I, p. 336.

⁷ Items 1, 3 and 4 were rep. by the A. O.

⁸ Subs. by the A. O. for "Lieutenant-Governor".

⁹ Subs. by the A. O. for "L. G."

¹⁰ Subs. by the A. O. for "Chief Commissioner".

1	2
Reference.	Construction.
12. All officers and official bodies not mentioned in the foregoing clauses except the Treasurer of Charitable Endowments whose authority extended immediately before the commencement of this Act over the territory mentioned in Schedule A.	Such officials or official bodies respectively as the ¹ [Provincial Government] may, by notification ² in the ³ [Official Gazette] direct.
** * * *	

THE OFFICIAL TRUSTEES ACT, 1913.

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¹ Subs. by the A. O. for "L. G."

² For such a notification, see Gazette of India, 1912, Pt. I, p. 1109.

³ Subs. by the A. O. for "Gazette of India".

⁴ Item 13 was rep. by the A. O.

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33. [Repealed.]

THE SCHEDULE—[Repealed.]

ACT No. II OF 1913.¹

[27th February, 1913.]

An Act to consolidate and amend the Law constituting the office of Official Trustee.

WHEREAS it is expedient to consolidate and amend the law constituting the office of the Official Trustee ; It is hereby enacted as follows :—

PART I.

PRELIMINARY.

Short title,
extent and
commence-
ment.

1. (1) This Act may be called the Official Trustees Act, 1913.

(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas, and applies also to all ²[British subjects in Indian States.]

(3) It shall come into force on such date³ as the ⁴[Central Government], by notification in the ⁵[Official Gazette], may direct.

Interpreta-
tion clause.

2. In this Act, unless there is anything repugnant in the subject or context,—

⁶[(1) “Government” or “the Government” means in relation to any Province, the Provincial Government, and, in relation to British subjects in Indian States, the Central Government:]

¹ For Statement of Objects and Reasons, see Gazette of India, 1912, Pt. V, p. 202 ; for Report of Select Committee, see *ibid.*, 1913, Pt. V, p. 19 ; and for Proceedings in Council, see *ibid.*, 1912, Pt. VI, p. 699 and *ibid.*, 1913, Pt. VI, pp. 15 and 28.

² Subs. by the A. O. for “British and Indian Subjects of His Majesty in the territories of Native States in India”.

³ The 1st April, 1914, see Gen. R. & O., Vol. IV, p. 388.

⁴ Subs. by the A. O. for “G. G. in C.”

⁵ Subs. by the A. O. for “Gazette of India”.

⁶ Subs. by the A. O. for original definition.

(Part I.—Preliminary. Part II.—The Office of Official Trustee.)

¹[(2) "High Court" means—

- (a) in relation to Bengal, Assam, and the Andaman and Nicobar Islands, the High Court at Calcutta ;
- (b) in relation to Madras and Coorg, the High Court at Madras ;
- (c) in relation to Bombay and British Baluchistan, the High Court at Bombay ;
- (d) in relation to the United Provinces and Ajmer-Merwara, the High Court at Allahabad ;
- (e) in relation to the Punjab and Delhi, the High Court at Lahore ;
- (f) in relation to the Provinces of Bihar and Orissa, the High Court at Patna ;
- (g) in relation to the Central Provinces and Berar, the High Court at Nagpur ;
- (h) in relation to Sind, the Judicial Commissioner's Court ;
- (i) in relation to the North-West Frontier Province, the Judicial Commissioner's Court ;
- (j) in relation to British subjects in any Indian State, that one of the aforesaid courts which the Central Government may from time to time notify in this behalf:]

2* * * * *

(4) "Prescribed" means prescribed by rules under this Act :

2* * * * *

³[(8) "Division" means the Province or State or group of States for which an Official Trustee has been appointed under this Act.]

3. For the purposes of this Act the High Court ⁴* * * shall have ⁵jurisdiction throughout the ⁵[Division].

Extent of
jurisdiction
of High
Courts.

PART II.

THE OFFICE OF OFFICIAL TRUSTEE.

4. ⁶[(1) The Provincial Government for each Province, and the Central Government for British subjects in any Indian State or group of Indian States, shall appoint an Official Trustee :

Provided that nothing herein contained shall be deemed to bar the appointment of the same person as Official Trustee for two or more Divisions.]

¹ Subs. by the A. O. for original definition.

² Cls. (3), (5), (6) and (7), defining "Official Gazette," "Presidency of Bengal," "Presidency of Bombay," "Presidency of Madras," "Presidency" and "Revenues of the Government" were rep. by the A. O.

³ Ins. by the A. O.

⁴ The words "at a Presidency-town" rep. by the A. O.

⁵ Subs. by the A. O. for "Presidency".

⁶ Subs. by the A. O. for the original sub-section.

(Part II.—The Office of Official Trustee. Part III.—Rights, Powers, Duties and Liabilities of Official Trustee.)

(2) No person shall be appointed to the office of Official Trustee ^{1*} who is not—

- (a) a Barrister ; or
- (b) an Advocate, Attorney or Vakil enrolled by a High Court ; or
- (c) a person holding the office of Deputy Administrator General at the commencement of this Act ; ²[or
- (d) in the case of a Province other than Bengal, Madras or Bombay, a person already in the service of the Crown.]

3* * * * * *

Appoint-
ment and
powers of
Deputy
Official
Trustee.

5. The Government may appoint a Deputy or Deputies to assist the Official Trustee ; and any Deputy so appointed shall, subject to the control of the Government and the general or special orders of the Official Trustee, be competent to discharge any of the duties and exercise any of the powers of the Official Trustee, and, when discharging such duties or exercising such powers, shall have the same privileges and be subject to the same liabilities as the Official Trustee.

Official
Trustee to
be corpora-
tion sole,
to have
perpetual
succession
and official
seal, and to
sue and be
sued in his
corporate
name.

6. The Official Trustee shall be a corporation sole by the name of the Official Trustee of the ⁴[Division] for which he is appointed and, as such Official Trustee, shall have perpetual succession and an official seal, and may sue and be sued in his corporate name.

PART III.

RIGHTS, POWERS, DUTIES AND LIABILITIES OF OFFICIAL TRUSTEE.

General
powers and
duties of
Official
Trustee.

7. (1) Subject to, and in accordance with, the provisions of this Act and the rules made thereunder, the Official Trustee may, if he thinks fit,—

- (a) act as an ordinary trustee ;
- (b) be appointed trustee by a Court of competent jurisdiction.

(2) Save as hereinafter expressly provided, the Official Trustee shall have the same powers, duties and liabilities and be entitled to the same rights and privileges and be subject to the same control and orders of the Court as any other trustee acting in the same capacity.

(3) The Official Trustee may decline, either absolutely or except on such conditions as he may impose, to accept any trust.

(4) The Official Trustee shall not accept any trust under any composition or scheme of arrangement for the benefit of creditors, nor of any estate known or believed by him to be insolvent.

¹ The words " of any of the said Presidencies " rep. by the A. O.

² Ins. by the A. O.

³ Sub-section (3) rep. by the A. O.

⁴ Subs. by the A. O. for " Presidency ".

(Part III.—Rights, Powers, Duties and Liabilities of Official Trustee.)

(5) The Official Trustee shall not, save as provided by any rules made under this Act, accept any trust for a religious purpose or any trust which involves the management or carrying on of any business.

(6) The Official Trustee shall not administer the estate of a deceased person, unless he is expressly appointed sole executor of, and sole trustee under, the will of such person.

(7) The Official Trustee shall always be sole trustee, and it shall not be lawful to appoint the Official Trustee to be trustee along with any other person.

8. (1) Any person intending to create a trust other than a trust which the Official Trustee is prohibited from accepting under the provisions of this Act may by the instrument creating the trust and with the consent of the Official Trustee, appoint him by that name or any other sufficient description to be the trustee of the property subject to such trust : Official Trustee may with consent be appointed trustee of settlement by grantor.

Provided that the consent of the Official Trustee shall be recited in the said instrument and that such instrument shall be duly executed by the Official Trustee.

(2) Upon such appointment the property subject to the trust shall vest in such Official Trustee, and shall be held by him upon the trusts declared in such instrument.

9. When the Official Trustee has by that name or any other sufficient description been appointed trustee under any will, the executor of the will of ¹[the testator] or the administrator of his estate shall, after obtaining probate or letters of administration, notify in the prescribed manner the contents of such will to such Official Trustee ; and, if such Official Trustee consents to accept the trust, then upon the execution by such executor or administrator of an instrument in writing transferring the property subject to the trust to the Official Trustee, such property shall vest in such Official Trustee, and shall be held by him upon the trusts expressed in the said will : Appointment of Official Trustee as trustee by will.

Provided that the consent of the Official Trustee shall be recited in the said instrument and that such instrument shall be duly executed by the Official Trustee.

10. (1) If any property is subject to a trust other than a trust which the Official Trustee is prohibited from accepting under the provisions of this Act, and there is no trustee within the local limits of the ordinary or extraordinary original civil jurisdiction of the High Court willing or capable to act in the trust, the High Court may on application make an order for the appointment of the Official Trustee by that name with his consent to be the trustee of such property. Power of High Court to appoint Official Trustee to be trustee of property.

(2) Upon such order such property shall vest in the Official Trustee and shall be held by him upon the same trusts as the same was held previously to such order, and the previous trustee or trustees (if any) shall be exempt

¹ Subs. by the Repealing and Amending Act, 1919 (18 of 1919), s. 2 and Sch. I, for "such testator".

(Part III.—Rights, Powers, Duties and Liabilities of Official Trustee.)

from liability as trustees of such property save in respect of acts done before the date of such order.

(3) Nothing in this section shall be deemed to affect the provisions of the Trustees' and Mortgagees' Powers Act, 1866, or the Indian Trusts Act, 1882. XXVIII of 1866. II of 1882.

Power of private trustees to appoint Official Trustee to be trustee of property.

11. (1) If any property is subject to a trust other than a trust which the Official Trustee is prohibited from accepting under the provisions of this Act, and all the trustees or the surviving or continuing trustee or trustees and all persons beneficially interested in the trust are desirous that the Official Trustee shall be appointed in the room of such trustee or trustees, it shall be lawful for such trustee or trustees, by an instrument in writing to appoint the Official Trustee by that name or any other sufficient description with his consent to be the trustee of such property :

Provided that the consent of the Official Trustee shall be recited in the said instrument and that such instrument shall be duly executed by him.

(2) Upon such appointment such property shall vest in the Official Trustee and shall be held by him upon the same trusts as the same was held previously to such appointment, and the previous trustee or trustees shall be exempt from all liability as trustees of such property save in respect of acts done before the date of such appointment.

Executor or administrator may pay to Official Trustee legacy, share, etc., of infant or lunatic.

12. (1) If any infant or lunatic is entitled to any gift, legacy or share of the assets of a deceased person, it shall be lawful for the person by whom such gift is made, or executor or administrator by whom such legacy or share is payable or transferable or any trustee of such gift, legacy or share, to transfer the same by an instrument in writing to the Official Trustee by that name or any other sufficient description with his consent :

Provided that the consent of the Official Trustee shall be recited in the said instrument and that such instrument shall be duly executed by the Official Trustee.

(2) Any money or property transferred to the Official Trustee under this section shall vest in him and shall be subject to the same provisions as are contained in this Act as to other property vested in such Official Trustee.

Official Trustee not to be required to give bond or security.

13. (1) No Official Trustee shall be required by any Court to enter into any bond or security on his appointment in any capacity under this Act.

(2) No Official Trustee or Deputy Official Trustee shall be required to verify otherwise than by his signature any petition presented by him under the provisions of this Act, and if the facts stated in any such petition are not within the Official Trustee's personal knowledge, the petition may be verified and subscribed by any person competent to make the verification.

Entry of Official Trustee not to constitute notice of a trust.

14. The entry of the Official Trustee by that name in the books of a company shall not constitute notice of a trust ; and a company shall not be entitled to object to enter the name of the Official Trustee on its register by reason only that the Official Trustee is a corporation ; and, in dealing with property, the fact that the person dealt with is the Official Trustee shall not of itself constitute notice of a trust.

(Part III.—Rights, Powers, Duties and Liabilities of Official Trustee.
Part IV.—Fees.)

15. (1) The revenues of the Government ¹* * shall be liable to make ^{Liability of Government.} good all sums required to discharge any liability which the Official Trustee, if he were a private trustee, would be personally liable to discharge, except when the liability is one to which neither the Official Trustee nor any of his officers has in any way contributed or which neither he nor any of his officers could by the exercise of reasonable diligence have averted, and in either of those cases the Official Trustee shall not, nor shall the revenues ²[of the Government]³* * * be subject to any liability.

(2) Nothing in sub-section (1) shall be deemed to render the revenues ²[of the Government]³* * * or any Official Trustee appointed under this Act liable for anything done by or under the authority of any Official Trustee before the commencement of this Act.

V of 1908.

16. Nothing in section 80 of the Code of Civil Procedure, 1908, shall apply to any suit against the Official Trustee in which no relief is claimed against him personally. ^{Notice of suit not required in certain cases.}

PART IV.

FEEs.

17. (1) There shall be charged in respect of the duties of the Official ^{Fees.} Trustee such fees, whether by way of percentage or otherwise, as the Government may prescribe :

Provided that in the case of a trust accepted by the Official Trustee before the commencement of this Act the fees prescribed under this section shall not exceed the fees leviable in respect of such trust under the Official Trustees Act, 1864,⁴ as subsequently amended.

XVII of 1864.

(2) The fees under this section may be at different rates for different properties or classes of properties or for different duties, and shall, so far as may be, be arranged so as to produce an amount sufficient to discharge the salaries and all other expenses incidental to the working of this Act (including such sum as Government may determine to be required to insure the revenues of the Government ⁵* * against loss under this Act).

18. (1) All expenses which might be retained or paid out of the trust fund, ^{Disposal of fees.} if the Official Trustee were a private trustee, shall be so retained or paid, and any fees leviable under this Act shall be retained or paid in like manner as and in addition to such expenses.

¹ The words "of India" rep. by the Official Trustees and Administrator General's Acts Amendment Act, 1922 (21 of 1922), s. 3.

² The words "of the Govt. or" were ins. by s. 3, *ibid.*

³ The words "or of the G. of I." rep. by the A. O.

⁴ Rep. by the Official Trustees Act, 1913 (2 of 1913).

⁵ The words "of India" rep. by the Official Trustees and Administrator General's Acts Amendment Act, 1922 (21 of 1922), s. 4.

(Part IV.—Fees. Part V.—Audit.)

(2) The Official Trustee shall transfer and pay to such authority and in such manner and at such times as the Government may prescribe, all fees received by him under this Act, and the same shall be carried to the account and credit of the Government ^{1*} * .

PART V.

AUDIT.

Auditors to be appointed to examine Official Trustee's accounts, etc., and to report to Government.

19. (1) The accounts of the Official Trustee shall be audited at least once annually and at any other time if the Government so direct by the prescribed person and in the prescribed manner.

(2) The auditor shall examine such accounts, and shall forward to Government a statement thereof in the prescribed form, together with a report thereon and a certificate signed by him showing—

- (a) whether the accounts contain a full and true account of everything which ought to be contained therein, and
- (b) whether the books, which by any rules made under this Act are directed to be kept by the Official Trustee, have been duly and regularly kept, and
- (c) whether the trust funds and securities have been duly kept and invested and deposited in the manner prescribed by this Act or any rules made thereunder ;

or (as the case may be) that such accounts are deficient, or that the Official Trustee has failed to comply with this Act or the rules made thereunder, in such respects as may be specified in such certificate.

20. (1) Every auditor shall have the powers of a Civil Court under the Code of Civil Procedure, 1908,

V of

Auditor's power to summon witnesses and to call for documents.

- (a) to summon any person whose presence he may think necessary to attend him from time to time, and
- (b) to examine any person, on oath to be by him administered, and
- (c) to issue a commission for the examination on interrogatories or otherwise of any person, and
- (d) to summon any person to produce any document or thing, the production of which appears to be necessary for the purposes of such audit or examination.

(2) Any person who, when summoned, refuses, or without reasonable cause neglects to attend or to produce any document or thing or attends and refuses to be sworn, or to be examined shall be deemed to have committed

¹ The words "of India" rep. by the Official Trustees and Administrator General's Acts Amendment Act, 1922 (21 of 1922), s. 4.

(Part V.—Audit. Part VI.—Miscellaneous.)

an offence within the meaning of, and punishable under, section 188 of the Indian Penal Code, and the auditor shall report every case of such refusal or neglect to Government.

XLV of 1860.

21. The cost of and incidental to every such audit and examination shall be determined in accordance with rules made by the Government and shall be defrayed in the prescribed manner.

Costs of audit, etc., how paid.

II of 1882.

22. Every beneficiary under a trust which is being administered by the Official Trustee shall, subject to such conditions and restrictions as may be prescribed, be entitled, at all reasonable times, to inspect the accounts of such trust, and the report and certificate of the auditor and, on payment of the prescribed fee, to be furnished with copies thereof or extracts therefrom, and nothing in the Indian Trusts Act, 1882, shall affect the provisions of this section.

Right of beneficiary to inspection and copies of accounts.

PART VI.

MISCELLANEOUS.

23. When any moneys payable to a beneficiary under a trust have been in the hands of any Official Trustee for a period of twelve years or upwards whether before or after the commencement of this Act in consequence of the Official Trustee having been unable to trace the person entitled to receive the same, such moneys shall be transferred in the prescribed manner to the account and credit of the Government ¹* * :

Transfer to Government of accumulations in the hands of Official Trustee.

Provided that no such moneys shall be so transferred if any suit or proceeding is pending in respect thereof in any Court.

24. (1) If any claim is made to any moneys so transferred and such claim is established to the satisfaction of the prescribed authority, the Government ¹* * shall pay to the claimant the amount in respect of which the claim is established.

Mode of proceeding by claimant to recover money so transferred.

(2) If such claim is not established to the satisfaction of the prescribed authority, the claimant may, without prejudice to his right to take any other proceedings for the recovery of such moneys, apply by petition to the High Court against the ²[Government] and, after taking such evidence as it thinks fit, such Court shall make such order on the petition in regard to the payment of such moneys as it thinks fit, and such order shall be binding on all parties to the proceedings :

³[Provided that nothing in this section affects any option afforded to a claimant by section 179 of the Government of India Act, 1935.]

26, Geo. 5,
c. 2.

¹ The words "of India" rep. by the Official Trustees and Administrator General's Acts Amendment Act, 1922 (21 of 1922), s. 4.

² Subs. by the A. O. for "Secretary of State for India in Council".

³ Ins. by the A. O.

(Part VI.—Miscellaneous.)

(3) The Court may further direct by whom all or any part of the costs of such proceedings shall be paid.

25. The High Court may make such orders as it thinks fit respecting any trust property vested in the Official Trustee, or the interest or produce thereof.

Power of High Court to make orders in respect of property vested in Official Trustee.

Who may apply for order under Act.

Order of Court to have effect of a decree.

General powers of administration.

26. Any order under this Act may be made, on the application of any person beneficially interested in any trust property or of any trustee thereof.

27. Any order made by a High Court under this Act shall have the same effect as a decree.

28. The Official Trustee may, in addition to and not in derogation of any other powers of expenditure lawfully exerciseable by him, incur expenditure—

(a) on such acts as may be necessary for the proper care and management of any property belonging to any trust administered by him; and

(b) with the sanction of the High Court on such religious, charitable and other objects and on such improvements as may be reasonable and proper in the case of such property.

29. (1) Nothing in this Act shall be deemed to prevent the transfer by the Official Trustee of any property vested in him to—

(a) the original trustee (if any); or

(b) any other lawfully appointed trustee; or

(c) any other person if the Court so directs.

(2) Upon such transfer such property shall vest in such trustee, and shall be held by him upon the same trusts as those upon which it was held prior to such transfer, and the Official Trustee shall be exempt from all liability as trustee of such property except in respect of acts done before such transfer:

Provided that, in the case of any transfer under this section, the Official Trustee shall be entitled to retain out of the property any fees leviable in accordance with the provisions of this Act.

30. (1) The Government shall make rules¹ for carrying into effect the objects of this Act and for regulating the proceedings of the Official Trustee in the discharge of his duties.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the accounts to be kept by the Official Trustee and the audit and inspection thereof;

Transfer of trust property by Official Trustee to original trustee or any other trustee.

Rules.

¹ For rules made by the G. G. in C. for the former Presidency of Bengal, see Gen. R. and O., Vol. IV, p. 393, and for other provinces see local R. and O.

(Part VI.—Miscellaneous.)

- (b) the safe custody, and deposit of the funds and securities which come into the hands of the Official Trustee ;
- (c) the remittance of sums of money in the hands of the Official Trustee in cases in which such remittances are required ;
- (d) the statements, schedules and other documents to be submitted by the Official Trustee to Government or to any other authority and the publication of such statements, schedules or other documents ;
- (e) the realization of the cost of preparing any such statements, schedules or other documents ;
- 1* * * * * * *
- (f) subject to the provisions of this Act, the fees to be paid thereunder and the collection and accounting for any fees so fixed ;
- (g) the manner in which and the person by whom the costs of and incidental to any audit under the provisions of this Act are to be determined and defrayed ;
- (h) the manner in which summonses issued under the provisions of section 20 are to be served and the payment of the expenses of any persons summoned or examined under the provisions of this Act and of any expenditure incidental to such examination ;
- (i) the acceptance by the Official Trustee of trusts for religious purposes and trusts which involve the management or carrying on of business ; and
- (j) any matter in this Act directed to be prescribed.

(3) Rules made under the provisions of this section shall be published in the Official Gazette, and shall thereupon have effect as if enacted in this Act.

31. [Division of Presidency into Provinces.] Rep. by the A. O.

32. Nothing contained in this Act shall be deemed to affect the provisions of the Indian Registration Act, 1908.

Saving of provisions of Indian Registration Act, 1908.

26 Geo. 5,
c. 2.

²[32A. The amendments³ of this Act which come into force on the commencement of Part III of the Government of India Act, 1935, shall not affect any legal proceedings pending in any court on that date or be construed as automatically transferring any property from any Official Trustee to any other Official Trustee : but nothing in this section shall be construed as

¹ Cl. (ee), which was ins. by the Repealing and Amending Act, 1914 (10 of 1914), was rep. by the Destruction of Records Act, 1917 (5 of 1917), s. 6 and Sch.

² S. 32A was ins. by the A. O.

³ I.e., the amendments made by the A. O. which came into force on the 1st April, 1937, simultaneously with Part III of the G. of I. Act, 1935.

preventing a transfer of any such property in accordance with any of the other provisions of this Act.]

33. [Repeals.] *Rep. by the Repealing Act, 1927 (XII of 1927), s. 2 and Sch.*

THE SCHEDULE.—[ENACTMENTS REPEALED.] *Rep. by the Repealing Act, 1927 (XII of 1927), s. 2 and Sch.*

THE ADMINISTRATOR GENERAL'S ACT, 1913.

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ACT NO. III OF 1913.¹

[27th February, 1913.]

An Act to consolidate and amend the law relating to the office and duties of Administrator General.

WHEREAS it is expedient to consolidate and amend the law relating to the office and duties of Administrator General ; It is hereby enacted as follows :—

PART I.

PRELIMINARY.

1. (1) This Act may be called the Administrator General's Act, 1913.

Short title,
extent and
commence-
ment.

¹ For Statement of Objects and Reasons, see Gazette of India, 1912, Pt. V, p. 188 : for Report of Select Committee, see *ibid.*, 1913, Pt. V, p. 3 ; and for Proceedings in Council, see *ibid.*, 1912, Pt. VI, p. 697 and *ibid.*, 1913, Pt. VI, pp. 14, 28 and 64.

(Part I.—Preliminary.)

(2) It extends to the whole of British India, including the Sonthal Parganas and British Baluchistan, and applies also to all ¹[British subjects in Indian States.]

(3) It shall come into force on such date² as the ³[Central Government] may, by notification in the ⁴[Official Gazette], direct.

Interpreta-
tion clause.

2. In this Act, unless there is anything repugnant in the subject or context,—

(1) “assets” means all the property, moveable and immoveable, of a deceased person, which is chargeable with, and applicable to, the payment of his debts and legacies, or available for distribution among his heirs and next-of-kin :

(2) “exempted person” means an Indian Christian, a Hindu, Muhammadan, Parsi or Buddhist, or a person exempted under section 332 of the Indian Succession Act, 1865⁵, from the operation of that Act :

X of 1865.

⁶[(3) “Government” or “the Government” means, in relation to any Province, the Provincial Government, and in relation to British subjects in Indian States, the Central Government:]

(4) “Indian Christian” means a Native of India who is or in good faith claims to be of unmixed Asiatic descent, and who professes any form of the Christian religion :

(5) “letters of administration” includes any letters of administration, whether general or with a copy of the will annexed, or limited in time or otherwise :

(6) “next-of-kin” includes a widower or widow of a deceased person, or any other person who by law would be entitled to letters of administration in preference to a creditor or legatee of the deceased :

7* * * * *

(8) “prescribed” means prescribed by rules under this Act :

7* * * * *

⁸[(12) “High Court” means—

(a) in relation to Bengal, Assam and the Andaman and Nicobar Islands, the High Court at Calcutta ;

(b) in relation to Madras and Coorg, the High Court at Madras ;

(c) in relation to Bombay and British Baluchistan, the High Court at Bombay ;

¹ Subs. by the A. O. for “British and Indian subjects of His Majesty in the territories of Native States in India”.

² The 1st April, 1914, *see* Gen. R. and O., Vol. IV, p. 406.

³ Subs. by the A. O. “G. G. in C.”

⁴ Subs. by the A. O. for “Gazette of India”.

⁵ *See now the Indian Succession Act, 1925 (39 of 1925), s. 3.*

⁶ Subs. by the A. O. for the original clause.

⁷ Cls. (7), (9), (10) and (11), defining Official Gazette, the Presidencies of Bengal, Bombay and Madras, Presidency and Revenues of the Govt., respectively, were rep. by the A. O. Cl. (11) had been ins. by the Official Trustees and Administrator General's Acts Amendment Act, 1922 (21 of 1922), s. 5.

⁸ Cls. (12) and (13) were ins. by the A. O.

(Part I.—Preliminary. Part II.—The Office of Administrator General.)

- (d) in relation to the United Provinces and Ajmer-Merwara, the High Court at Allahabad ;
- (e) in relation to the Punjab and Delhi, the High Court at Lahore ;
- (f) in relation to the Provinces of Bihar and Orissa, the High Court at Patna ;
- (g) in relation to the Central Provinces and Berar, the High Court at Nagpur ;
- (h) in relation to Sind, the Judicial Commissioner's Court ;
- (i) in relation to the North-West Frontier Province, the Judicial Commissioner's Court ; and
- (j) in relation to British subjects in any Indian State, that one of the aforesaid courts which the Central Government may from time to time notify in this behalf :

(13) " Division " means the Province or State or group of States for which an Administrator General has been appointed under this Act.]

PART II.

THE OFFICE OF ADMINISTRATOR GENERAL.

3. ¹[(1) The Provincial Government for each Province, and the Central Government for British subjects in any Indian State or group of Indian States, shall appoint an Administrator General : Appointment of Administrators General.

Provided that nothing herein contained shall be deemed to bar the appointment of the same person as Administrator General for two or more Divisions.]

(2) No person shall be appointed to the office of Administrator General 2* * * * * who is not—

- (a) a Barrister ; or
- (b) an Advocate, Attorney or Vakil enrolled by a High Court ; or
- (c) a person holding the office of Deputy Administrator General at the commencement of this Act ; ³[or
- (d) in the case of a Province other than Bengal, Madras or Bombay, a person already in the service of the Crown.]

4* * * * *

4. The Government may appoint a Deputy or Deputies to assist the Administrator General ; and any Deputy so appointed shall, subject to the control of the Government and the general or special orders of the Administrator General, be competent to discharge any of the duties and to exercise Appointment and powers of Deputy Administrators General.

¹ Subs. by the A. O. for original sub-section (1).

² The words " of any of the said Presidencies " rep. by the A. O.

³ Ins. by the A. O.

⁴ Sub-section (3) rep. by the A. O.

(Part III.—Rights, Powers, Duties and Liabilities of the Administrator General.)

8. The Administrator General of the ¹[Division] shall be deemed by all the Courts in the ¹[Division] to have a right to letters of administration other than letters *pendente lite* in preference to that of—

- (a) a creditor ; or
- (b) a legatee other than an universal legatee ; or
- (c) a friend of the deceased.

Administrator General entitled to letters of administration in preference to creditor, non-universal legatee or friend.

9. If any person, not being an exempted person, has died leaving within any ¹[Division] assets exceeding the value of ²[two thousand] rupees,

and if no person to whom any Court would have jurisdiction to commit administration of such assets has, within one month after his death, applied in such ¹[Division] for probate of his will, or for letters of administration of his estate,

When Administrator General is to administer estates of persons other than exempted persons.

the Administrator General of the ¹[Division] in which such assets are shall, subject to any rules made by the Government, within a reasonable time after he has had notice of the death of such person, and of his having left such assets, take such proceedings as may be necessary to obtain from the High Court

3* * * letters of administration of the estate of such person.

10. Whenever any person has died leaving assets within the local limits of the ordinary original civil jurisdiction of the High Court at a Presidency-town, the Court, on being satisfied that danger is to be apprehended of misappropriation, deterioration or waste of such assets unless letters of administration of the estate of such person are granted, may upon the application of the Administrator General or of any person interested in such assets or in the due administration thereof, make an order, upon such terms as to indemnifying the Administrator General against costs and other expenses as the Court thinks fit, directing the Administrator General to apply for letters of administration of the estate of such person :

Power to direct Administrator General to apply for administration.

Provided that, in the case of an application being made under this section for letters of administration of the estate of an exempted person, the Court may refuse to grant letters of administration, if it is satisfied that such grant is unnecessary for the protection of the assets ; and in such case the Court shall make such order as to the costs of the application as it thinks fit.

¹ Subs. by the A. O. for " Presidency ".

² Subs. by the Administrator General's (Amendment) Act, 1926 (32 of 1926), s. 2, for " one thousand ".

³ The words " at the Presidency-town " rep. by the A. O.

(Part III.—Rights, Powers, Duties and Liabilities of the Administrator General.)

Power to direct Administrator General to collect and hold assets until right of succession or administration is determined.

11. (1) Whenever any person has died leaving assets within the local limits of the ordinary original civil jurisdiction of any of the said High Courts, and such Court is satisfied that there is no person immediately available, who is legally entitled to the succession to such assets, or that danger is to be apprehended of misappropriation, deterioration or waste of such assets, before it can be determined who may be legally entitled to the succession thereto, or whether the Administrator General is entitled to letters of administration of the estate of such deceased person,

the Court may, upon the application of the Administrator General or of any person interested in such assets, or in the due administration thereof, forthwith direct the Administrator General to collect and take possession of such assets, and to hold, deposit, realize, sell or invest the same according to the directions of the Court, and in default of any such directions according to the provisions of this Act so far as the same are applicable to such assets.

(2) Any order of the Court made under the provisions of this section shall entitle the Administrator General,

- (a) to maintain any suit or proceeding for the recovery of such assets, and
- (b) if he thinks fit, to apply for letters of administration of the estate of such deceased person, and
- (c) to retain out of the assets of the estate any fees chargeable under rules made under this Act, and to reimburse himself for all payments made by him in respect of such assets which a private administrator might lawfully have made.

12. If, in the course of proceedings to obtain letters of administration under the provisions of section 9, section 10, or section 11, any person appears and establishes his claim—

- (a) to probate of the will of the deceased ; or
- (b) to letters of administration as next-of-kin of the deceased, and gives such security as may be required of him by law,

the Court shall grant probate of the will or letters of administration accordingly, and shall award to the Administrator General the costs of any proceedings taken by him, under those sections to be paid out of the estate as part of the testamentary or intestate expenses thereof.

13. If, in the course of proceedings to obtain letters of administration under the provisions of section 9, section 10, or section 11, no person appears and establishes his claim to probate of a will, or to a grant of letters of administration as next-of-kin of the deceased, within such period as to the Court seems reasonable,

or if a person who has established his claim to a grant of letters of administration as next-of-kin of the deceased fails to give such security as may be required of him by law,

the Court may grant letters of administration to the Administrator General.

Grant of probate or letters of administration to person appearing in the course of proceedings taken by Administrator General under sections 9, 10 and 11.

Grant of administration to Administrator General in certain cases.

(Part III.—Rights, Powers, Duties and Liabilities of the Administrator General.)

14. Nothing in this Act shall be deemed to preclude the Administrator General from applying to the Court for letters of administration in any case within the period of one month from the death of the deceased.

Administrator General not precluded from applying for letters within one month after death.

(b) *Estates of Persons subject to the Army Act* ¹ [or the Air Force Act.]

55 & 56
Vict., c. 57.

15. Nothing in this Act shall be deemed to affect the provisions of the Regimental Debts Act, 1893.²

Act not to affect Regimental Debts Act, 1893.

55 & 56
Vict., c. 57.

16. It shall not be necessary for the Administrator General to take out letters of administration of the estate of any deceased person which is being administered by him in accordance with the provisions of the Regimental Debts Act, 1893², if the value of such estate does not on the date when such administration is committed to him exceed rupees one thousand, but he shall have the same power in regard to such estate as he would have had if letters of administration had been granted to him.

Letters of administration not necessary in respect of small estates administered by Administrator General in accordance with the Regimental Debts Act, 1893.

55 & 56
Vict., c. 57.

17. If the Administrator General applies, in accordance with the provisions of the Regimental Debts Act, 1893², for letters of administration of the estate of any person subject to the Army Act ¹ [or the Air Force Act], the Court may grant to him letters of administration limited to the purpose of dealing with such estate in accordance with the provisions of the Regimental Debts Act, 1893².

Power to grant Administrator General letters limited to purpose of dealing with assets in accordance with the Regimental Debts Act, 1893.

55 & 56
Vict., c. 57.

(c) Revocation of Grants.

18. If an executor or next-of-kin of the deceased, who has not been personally served with a citation or who has not had notice thereof in time to appear pursuant thereto establishes to the satisfaction of the Court a claim to probate of a will or to letters of administration in preference to the Administrator General, any letters of administration granted in accordance with the provisions of this Act to the Administrator General may be revoked, and probate or letters of administration may be granted to such executor or next-of-kin as the case may be :

Recall of Administrator General's administration, and grant of probate, etc., to executor or next-of-kin.

Provided that no letters of administration granted to the Administrator General shall be revoked for the cause aforesaid, except in cases in which a

¹ Ins. by the Repealing and Amending Act, 1927 (10 of 1927), s. 2 and Sch. I.

² Coll. Stats. Ind., Vol. II.

(Part III.—Rights, Powers, Duties and Liabilities of the Administrator General.)

will of the deceased is proved in the ¹[Division], unless the application for that purpose is made within six months after the grant to the Administrator General and the Court is satisfied that there has been no unreasonable delay in making the application, or in transmitting the authority under which the application is made.

Cost of obtaining administration, etc., may, on ¹ revocation, be ordered to be paid to Administrator General out of assets.

19. If any letters of administration granted to the Administrator General in accordance with the provisions of this Act are revoked, the Court may order the costs of obtaining such letters of administration, and the whole or any part of any fees which would otherwise have been payable under this Act, together with the costs of the Administrator General in any proceedings taken to obtain such revocation, to be paid to or retained by the Administrator General out of the estate :

Provided that nothing in this section shall affect the provisions of clause (c) of sub-section (2) of section 11.

After revocation, letters granted to Administrator General to be deemed as to him to have been voidable only.

20. If any letters of administration granted to the Administrator General in accordance with the provisions of this Act are revoked, the same shall, so far as regards the Administrator General and all persons acting under his authority in pursuance thereof, be deemed to have been only voidable, except as to any act done by any such Administrator General or other person as aforesaid, after notice of a will or of any other fact which would render such letters void :

Provided that no notice of a will or of any other fact which would render any such letters void shall affect the Administrator General or any person acting under his authority in pursuance of such letters unless, within the period of one month from the time of giving such notice, proceedings are commenced to prove the will, or to cause the letters to be revoked, and such proceedings are prosecuted without unreasonable delay.

Payments made by Administrator General prior to revocation.

21. If any letters of administration granted to the Administrator General in accordance with the provisions of this Act are revoked, upon the grant of probate of a will, or upon the grant of letters of administration with a copy of the will annexed, all payments made or acts done by or under the authority of the Administrator General in pursuance of such letters of administration, prior to the revocation, which would have been valid under any letters of administration lawfully granted to him with a copy of such will annexed, shall be deemed valid notwithstanding such revocation.

(d) General.

Administrator General's petition for grant of letters of administration.

22. Whenever any Administrator General applies for letters of administration in accordance with the provisions of this Act, it shall be sufficient if the petition required to be presented for the grant of such letters states,

- (i) the time and place of the death of the deceased to the best of the knowledge and belief of the petitioner,

¹ Subs. by the A. O. for "Presidency".

(Part III.—Rights, Powers, Duties and Liabilities of the Administrator General.)

- (ii) the names and addresses of the surviving next-of-kin of the deceased if known,
- (iii) the particulars and value of the assets likely to come into the hands of the petitioner,
- (iv) particulars of the liabilities of the estate if known.

¹[23. All probates or letters of administration granted to any Administrator General shall be granted to him by that name.]

Name in which probate or letters to be granted.

24. Probate or letters of administration granted by the High Court ²* * * * to the Administrator General of any ³[Division] shall have effect over all the assets of the deceased throughout such ³[Division], and shall be conclusive as to the representative title against all debtors of the deceased and all persons holding such assets, and shall afford full indemnity to all debtors paying their debts and all persons delivering up such assets to such Administrator General.

Effect of probate or letters granted to Administrator General.

Provided that the High Court may direct, by its grant, that such probate or letters of administration shall have like effect throughout one or more of the other ⁴[Divisions.]

Whenever a grant is made by a High Court to the Administrator General with such effect as last aforesaid, the Court shall send to the other High Courts a certificate that such grant has been made, and such certificate shall be filed by the Courts receiving the same.

⁵[A grant made by the High Court at Rangoon before the ⁶ separation of Burma from India shall have the same effect for the purposes of this section as it would have had if the separation had not taken place.]

25. (1) Any private executor or administrator may with the previous consent of the Administrator General of the ³[Division] in which any of the assets of the estate, in respect of which such executor or administrator has obtained probate or letters of administration, are situate, by an instrument in writing under his hand notified in the Official Gazette, transfer the assets of the estate vested in him by virtue of such probate or letters to the Administrator General by that name or any other sufficient description.

Transfer by private executor or administrator of interest under probate or letters.

(2) As from the date of such transfer the transferor shall be exempt from all liability as such executor or administrator, as the cases may be, except in respect of acts done before the date of such transfer, and the Administrator General shall have the rights which he would have had, and be subject to the liabilities to which he would have been subject, if the probate or letters of administration, as the case may be, had been granted to him by that name at the date of such transfer.

¹ Subs. by the A. O. for the original section.

² The words "at any Presidency-town" rep. by the A. O.

³ Subs. by the A. O. for "Presidency".

⁴ Subs. by the A. O. for "Presidencies".

⁵ Ins. by the A. O.

⁶ Burma was separated from India on the 1st April, 1937.

(Part III.—Rights, Powers, Duties and Liabilities of the Administrator General.)

Distribution
of assets.

26. (1) When the Administrator General has given the prescribed notice for creditors and others to send in to him their claims against the estate of the deceased, he shall, at the expiration of the time therein named for sending in claims, be at liberty to distribute the assets or any part thereof in discharge of such lawful claims as he has notice of.

(2) He shall not be liable for the assets so distributed to any person of whose claim he had not notice at the time of such distribution.

(3) No notice of any claim which has been sent in and has been rejected or disallowed in part by the Administrator General shall affect him unless proceedings to enforce such claim are commenced within one month after notice of the rejection or disallowance of such claim has been given in the prescribed manner and unless such proceedings are prosecuted without unreasonable delay.

(4) Nothing in this section shall prejudice the right of any creditor or other claimant to follow the assets or any part thereof in the hands of the persons who may have received the same respectively.

(5) In computing the period of limitation for any suit, appeal or application under the provisions of any law for the time being in force, the period between the date of submission of the claim of a creditor to the Administrator General and the date of the final decision of the Administrator General on such claim shall be excluded.

Appointment
of Official
Trustee as
trustee of
assets after
completion
of adminis-
tration.

27. (1) When the Administrator General has, so far as may be, discharged all the liabilities of an estate administered by him, he shall notify the fact in the Official Gazette, and he may, by an instrument in writing, with the consent of the Official Trustee and subject to any rules made by the Government, appoint the Official Trustee to be the trustee of any assets then remaining in his hands.

(2) Upon such appointment such assets shall vest in the Official Trustee as if he had been appointed trustee in accordance with the provisions of the Official Trustees Act, 1913, and shall be held by him upon the same trusts II of 1913. as the same were held immediately before such appointment.

Power for
High Court
to give direc-
tions regard-
ing adminis-
tration of
estate.

28. (1) The High Court¹ * * * may, on application made to it, give to the Administrator General of the ²[Division] any general or special directions as to any estate in his charge or in regard to the administration of any such estate.

(2) Applications under sub-section (1) may be made by the Administrator General or any person interested in the assets or in the due administration thereof.

No security
nor oath to
be required
from Ad-
ministrator
General.

29. (1) No Administrator General shall be required by any Court to enter into any administration-bond, or to give other security to the Court, on the grant of any letters of administration to him by that name.

¹ The words "at the Presidency-town" rep. by the A. O.

² Subs. by the A. O. for "Presidency".

(Part III.—Rights, Powers, Duties and Liabilities of the Administrator General.)

(2) No Administrator General or Deputy Administrator General shall be required to verify, otherwise than by his signature, any petition presented by him under the provisions of this Act, and, if the facts stated in any such petition are not within the Administrator General's own personal knowledge, the petition may be subscribed and verified by any person competent to make the verification.

Manner in which petitions to be verified by Administrator General and his Deputy.

(3) The entry of the Administrator General by that name in the books of a Company shall not constitute notice of a trust, and a Company shall not be entitled to object to enter the name of the Administrator General on its register by reason only that the Administrator General is a corporation and in dealing with assets the fact that the person dealt with is the Administrator General shall not of itself constitute notice of a trust.

Entry of Administrator General not to constitute notice of a trust.

30. The Administrator General may, whenever he desires, for the purposes of this Act, to satisfy himself regarding any question of fact, examine upon oath (which he is hereby authorised to administer) any person who is willing to be so examined by him regarding such question.

Power to examine on oath.

(e) Grant of Certificates.

31. Whenever any person has died leaving assets within any ¹[Division], and the Administrator General of such ¹[Division] is satisfied that such assets, excluding any sum of money deposited in a Government Savings Bank, or in any Provident Fund to which the provisions of the Provident Funds Act, 1897², apply, did not at the date of death exceed in the whole ³[two thousand] rupees—in value, he may, after the lapse of one month from the death if he thinks fit, or before the lapse of the said month if he is requested so to do by writing under the hand of the executor or the widow or other person entitled to administer the estate of the deceased, grant to any person, claiming otherwise than as a creditor to be interested in such assets, or in the due administration thereof, a certificate under his hand entitling the claimant to receive the assets therein mentioned left by the deceased, within the ¹[Division] to a value not exceeding in the whole ³[two thousand] rupees :

In what case Administrator General may grant certificate.

IX of 1897.

Provided that no certificate shall be granted under this section—

- (i) where probate of the deceased's will or letters of administration of his estate has or have been granted, or
- (ii) in respect of any sum of money deposited in a Government Savings Bank or in any Provident Fund to which the provisions of the Provident Funds Act, 1897², apply.

IX of 1897.

¹ Subs. by the A. O. for "Presidency".

² See now the Provident Funds Act, 1925 (19 of 1925).

³ Subs. by the Administrator General's (Amendment) Act, 1926 (32 of 1926), s. 2, for "one thousand".

(Part III.—Rights, Powers, Duties and Liabilities of the Administrator General.)

Grant of certificate to creditors and power to take charge of certain estates.

32. If, in cases falling within section 31, no person claiming to be interested otherwise than as a creditor in such assets or in the due administration thereof obtains, within three months of the death of the deceased a certificate from the Administrator General under the same section, or probate of a will or letters of administration of the estate of the deceased, and such deceased was not an exempted person, or was an exempted person who has left assets within the ordinary original civil jurisdiction of the High Court, or within any area notified by the Government in this behalf in the Official Gazette, the Administrator General may administer the estate without letters of administration, in the same manner as if such letters had been granted to him ;

and if he neglects or refuses to administer such estate, he shall, upon the application of a creditor, grant a certificate to him in the same manner as if he were interested in such assets otherwise than as a creditor,

and such certificate shall have the same effect as a certificate granted under the provisions of section 31, and shall be subject to all the provisions of this Act which are applicable to such certificate :

Provided that the Administrator General may, before granting such certificate, if he thinks fit, require the creditor to give reasonable security for the due administration of the estate of the deceased.

Administrator General not bound to grant certificate unless satisfied of claimant's title, etc.
Effect of certificate.

33. The Administrator General shall not be bound to grant any certificate under section 31 or section 32, unless he is satisfied of the title of the claimant and of the value of the assets left by the deceased within the presidency, either by the oath of the claimant, or by such other evidence as he requires.

34. The holder of a certificate granted in accordance with the provisions of section 31 or section 32, shall have in respect of the assets specified in such certificate the same powers and duties, and be subject to the same liabilities as he would have had or been subject to if letters of administration had been granted to him :

Provided that nothing in this section shall be deemed to require any person holding such certificate,

- (a) to file accounts or inventories of the assets of the deceased before any Court or other authority, or
- (b) save as provided in section 32 to give any bond for the due administration of the estate.

Revocation of certificate.

35. The Administrator General may revoke a certificate granted under the provisions of section 31 or section 32 on any of the following grounds, namely :—

- (i) that the certificate was obtained by fraud or misrepresentation made to him.

(Part III.—Rights, Powers, Duties and Liabilities of the Administrator General.)

- (ii) that the certificate was obtained by means of an untrue allegation of a fact essential in law to justify the grant though such allegation was made in ignorance or inadvertently.

36. (1) When a certificate is revoked in accordance with the provisions of section 35, the holder thereof shall, on the requisition of the Administrator General, deliver it up to such Administrator General, but shall not be entitled to the refund of any fee paid thereon. Surrender of revoked certificate.

(2) If such person wilfully and without reasonable cause omits to deliver up the certificate, he shall be punishable with imprisonment which may extend to three months, or with fine which may extend to one thousand rupees, or with both.

37. The Administrator General shall not be bound to take out letters of administration of the estate of any deceased person on account of the assets in respect of which he grants any certificate, under section 31 or section 32, but he may do so if he revokes such certificate under section 35 or ascertains that the value of the estate exceeded ¹[two thousand] rupees. Administrator General not bound to take out administration on account of assets for which he has granted certificate.

38. Where a person not having his domicile in British India has died leaving assets in any ²[Division] and in the country in which he had his domicile at the time of his death, and proceedings for the administration of his estate with respect to assets in any such ²[Division] have been taken under section 31 or section 32, and there has been a grant of administration in the country of domicile with respect to the assets in that country, Transfer of certain assets from British India to executor or administrator in country of domicile for distribution.

the holder of the certificate granted under section 31 or section 32, or the Administrator General, as the case may be, after having given the prescribed notice for creditors and others to send in to him their claims against the estate of the deceased, and after having discharged, at the expiration of the time therein named, such lawful claims as he has notice of, may, instead of himself distributing any surplus or residue of the deceased's property to persons residing out of British India who are entitled thereto transfer, with the consent of the executor or administrator, as the case may be, in the country of domicile, the surplus or residue to him for distribution to those persons.

(f) Liability.

39. (1) The revenues of the Government³ * shall be liable to make good all sums required to discharge any liability which the Administrator General, if he were a private administrator, would be personally liable to discharge, except when the liability is one to which neither the Administrator Liability of Government.

¹ Subs. by the Administrator General's (Amendment) Act, 1926 (32 of 1926), s. 2, for "one thousand".

² Subs. by the A. O. for "Presidency".

³ The words "of India" rep. by the Official Trustees and Administrator General's Acts Amendment Act, 1922 (21 of 1922), s. 6.

(Part III.—Rights, Powers, Duties and Liabilities of the Administrator General.
Part IV.—Fees.)

General nor any of his officers has in any way contributed, or which neither he nor any of his officers could, by the exercise of reasonable diligence have averted, and in either of those cases the Administrator General shall not, nor shall the revenues ¹[of the Government],² * * * * * be subject to any liability.

(2) Nothing in sub-section (1) shall be deemed to render ¹[the Government]² * * * * * or the Administrator General liable for anything done before the commencement of this Act, by or under the authority of the Administrator General.

Creditors' suits against Administrator General.

40. (1) If any suit be brought by a creditor against any Administrator General, such creditor shall be liable to pay the costs of the suit unless he proves that not less than one month previous to the institution of the suit he had applied in writing to the Administrator General, stating the amount and other particulars of his claim, and had given such evidence in support thereof as, in the circumstances of the case, the Administrator General was reasonably entitled to require.

(2) If any such suit is decreed in favour of the creditor, he shall, nevertheless, unless he is a secured creditor, be only entitled to payment out of the assets of the deceased equally and rateably with the other creditors.

Notice of suit not required in certain cases.

41. Nothing in section 80 of the Code of Civil Procedure, 1908, shall apply ^v of 1908. to any suit against the Administrator General in which no relief is claimed against him personally.

PART IV.

FEEs.

Fees.

42. (1) There shall be charged in respect of the duties of the Administrator General such fees, whether by way of percentage or otherwise, as may be prescribed by the Government :

Provided that, in the case of any estate, the administration of which has been committed to the Administrator General before the commencement of this Act, the fees prescribed under this section shall not exceed the fees leviable in respect of such estate under the Administrator General's Act, 1874³, II of 1874. as subsequently amended :

Provided further that, in respect of the duties of the Administrator General under the Regimental Debts Act, 1893⁴, the fees prescribed in this section shall be determined in accordance with the provisions of that Act.

55 & 56
Vict., c. 57.

¹ The words " of the Government or " were ins. by the Official Trustees and Administrator General's Acts Amendment Act, 1922 (21 of 1922), s. 6.

² The words " or the G. of I. " rep. by the A. O.

³ Rep. by the Administrator General's Act, 1913 (3 of 1913).

⁴ Coll. of Stats. Ind., Vol. II.

(Part IV.—Fees. Part V.—Audit of the Administrator General's Accounts.)

(2) The fees under this section may be at different rates for different estates or classes of estates or for different duties, and shall, so far as may be, be arranged so as to produce an amount sufficient to discharge the salaries and all other expenses incidental to the working of this Act (including such sum as Government may determine to be required to insure the revenues of the Government^{1*} * against loss under this Act).

43. (1) Any expenses which might be retained or paid out of any estate in the charge of the Administrator General, if he were a private administrator of such estate, shall be so retained or paid and the fees prescribed under section 42 shall be retained or paid in like manner as and in addition to such expenses.

(2) The Administrator General shall transfer and pay to such authority, in such manner and at such time as the Government may prescribe, all fees received by him under this Act, and the same shall be carried to the account and credit of the Government^{1*} *.

PART V.

AUDIT OF THE ADMINISTRATOR GENERAL'S ACCOUNTS.

44. The accounts of every Administrator General shall be audited at least once annually, and at any other time if the Government so direct, by the prescribed person and in the prescribed manner.

45. The auditors shall examine the accounts and forward to the Government a statement thereof in the prescribed form, together with a report thereon and a certificate signed by them showing—

- (a) whether they contain a full and true account of everything which ought to be inserted therein,
- (b) whether the books which by any rules made under this Act are directed to be kept by the Administrator General, have been duly and regularly kept, and
- (c) whether the assets and securities have been duly kept and invested and deposited in the manner prescribed by this Act, or by any rules made thereunder,

or (as the case may be) that such accounts are deficient, or that the Administrator General has failed to comply with this Act or the rules made thereunder, in such respects as may be specified in such certificate.

46. (1) Every auditor shall have the powers of a Civil Court under the Code of Civil Procedure, 1908,

- (a) to summon any person whose presence he thinks necessary to attend him from time to time ; and

¹ The words " of India " rep. by the Official Trustees and Administrator General's Acts Amendment Act, 1922 (21 of 1922), s. 7.

Disposal of fees.

Audit of Administrator General's accounts.

Auditors to examine accounts and report to Government.

Power of auditors to summon and examine witnesses, and to call for documents.

(Part V.—Audit of the Administrator General's Accounts. Part VI.—Miscellaneous.)

- (b) to examine any person on oath to be by him administered ; and
- (c) to issue a commission for the examination on interrogatories or otherwise of any person ; and
- (d) to summon any person to produce any document or thing the production of which appears to be necessary for the purpose of such audit or examination.

(2) Any person who when summoned refuses, or without reasonable cause, neglects to attend or to produce any document or thing or attends and refuses to be sworn, or to be examined, shall be deemed to have committed an offence within the meaning of, and punishable under, section 188 of the Indian Penal Code, and the auditor shall report every case of such refusal or neglect to Government. XLV of 1860.

Costs of
audit, etc.

47. The costs of and incidental to such audit and examination shall be determined in accordance with rules made by the Government, and shall be defrayed in the prescribed manner.

PART VI.

MISCELLANEOUS.

General
powers of
administra-
tion.

48. The Administrator General may, in addition to, and not in derogation of, any other powers of expenditure lawfully exerciseable by him, incur expenditure—

- (a) on such acts as may be necessary for the proper care and management of any property belonging to any estate in his charge ; and
- (b) with the sanction of the High Court¹ * * * * * on such religious, charitable and other objects, and on such improvements, as may be reasonable and proper in the case of such property.

Power of
person
beneficially
interested to
inspect
Adminis-
trator
General's
accounts,
etc., and
take copies.

49. Any person interested in the administration of any estate, which is in the charge of the Administrator General shall, subject to such conditions and restrictions as may be prescribed, be entitled at all reasonable times to inspect the accounts relating to such estate and the reports and certificates of the auditor, and on payment of the prescribed fee, to copies thereof and extracts therefrom.

¹ The words "at the Presidency-town" rep. by the A. O.

(Part VI.—Miscellaneous.)

50. (1) The Government shall make rules¹ for carrying into effect the objects of this Act and for regulating the proceedings of the Administrator General. Power to make rules.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for—

- (a) the accounts to be kept by the Administrator General and the audit and inspection thereof,
- (b) the safe custody, deposit and investment of assets and securities which come into the hands of the Administrator General,
- (c) the remittance of sums of money in the hands of the Administrator General in cases in which such remittances are required,
- (d) subject to the provisions of this Act, the fees to be paid under this Act, and the collection and accounting for any such fees,
- (e) the statements, schedules and other documents to be submitted to the Government or to any other authority by the Administrator General, and the publication of such statements, schedules or other documents,
- (f) the realization of the cost of preparing any such statements, schedules or other such documents,
2 * * * *
- (g) the manner in which and the person by whom the costs of and incidental to any audit under the provisions of this Act are to be determined and defrayed,
- (h) the manner in which summonses issued under the provisions of section 46 are to be served and the payment of the expenses of any persons summoned or examined under the provisions of this Act and of any expenditure incidental to such examination, and
- (i) any matter in this Act directed to be prescribed.

(3) All rules made under this Act shall be published in the Official Gazette and, on such publication, shall have effect as if enacted in this Act.

51. Whoever, during any examination authorised by this Act, makes upon oath a statement which is false and which he either knows or believes to be false or does not believe to be true, shall be deemed to have intentionally given false evidence in a stage of a judicial proceeding. False evidence.

52. All assets in the charge of the Administrator General which have been in his custody for a period of twelve years or upwards whether before or after the commencement of this Act without any application for payment thereof Assets unclaimed for twelve years to be transferred to Government.

¹ For such rules for Bengal, see Gen. R. and O., Vol. IV, p. 406 ; for Madras, see Madras R. and O., 1923, Vol. I, Pt. II, p. 231 ; for Bombay, see Bombay R. and O., 1924, Vol. II, p. 773 ; for the provinces of Assam, U. P. and Punjab, see the local Gazettes of 1914 or the latest editions of the Rules and Orders of those provinces.

² Clause (ff), ins. by the Repealing and Amending Act, 1914 (10 of 1914), was rep. by the Destruction of Records Act, 1917 (5 of 1917), s. 6 and Sch.

(Part VI.—Miscellaneous.)

having been made and granted by him shall be transferred, in the prescribed manner, to the account and credit of the Government¹* * * :

Provided that this section shall not authorise the transfer of any such assets as aforesaid, if any suit or proceeding is pending in respect thereof in any Court.

Mode of proceeding by claimant to recover principal money so transferred.

53. (1) If any claim is hereafter made to any part of the assets transferred to the account and credit of the Government¹* * * under the provisions of this Act, or any Act hereby repealed, and if such claim is established to the satisfaction of the prescribed authority, the Government¹* * * shall pay to the claimant the amount of the principal so transferred to its account and credit or so much thereof as appears to be due to the claimant.

(2) If the claim is not established to the satisfaction of the prescribed authority, the claimant may, without prejudice to his right to take any other proceedings for the recovery of such assets, apply by petition to the High Court²* * * * * against the ³[Government], and such Court, after taking such evidence as it thinks fit, shall make such order in regard to the payment of the whole or any part of the said principal sum as it thinks fit, and such order shall be binding on all parties to the proceeding :

⁴[Provided that nothing in this section affects any option afforded to a claimant by section 179 of the Government of India Act, 1935.]

26 Geo.
5, c. 2.

(3) The Court may further direct by whom the whole or any part of the cost of each party shall be paid.

District Judge in certain cases to take charge of property of deceased persons, and to report to Administrator General.

54. (1) Whenever any person, other than an exempted person, dies leaving assets within the limits of the jurisdiction of a District Judge, the District Judge shall report the circumstance without delay to the Administrator General of the ⁵[Division] stating the following particulars so far as they may be known to him :—

(a) the amount and nature of the assets,

(b) whether or not the deceased left a will and, if so, in whose custody it is,

(c) the names and addresses of the surviving next-of-kin of the deceased, and, on the lapse of one month from the date of the death,

(d) whether or not any one has applied for probate of the will of the deceased or letters of administration of his estate.

(2) The District Judge shall retain the assets under his charge, or appoint an officer under the provisions of section 239⁶ of the Indian Succession Act, 1865, to take and keep possession of the same until the Administrator General X of 1865. has obtained letters of administration, or until some other person has obtained

¹ The words " of India " rep. by the Official Trustees and Administrator General's Acts Amendment Act, 1922 (21 of 1922), s. 7.

² The words " at the Presidency-town " rep. by the A. O.

³ Subs. by the A. O. for " Secretary of State for India in Council".

⁴ Ins. by the A. O.

⁵ Subs. by the A. O. for " Presidency".

⁶ See now s. 269 of the Indian Succession Act, 1925 (39 of 1925).

(Part VI.—Miscellaneous.)

probate or such letters or a certificate from the Administrator General under the provisions of this Act, when the assets shall be delivered over to the holder of such probate, letters of administration or certificate :

Provided that the District Judge may, if he thinks fit, sell any assets which are subject to speedy and natural decay, or which for any other sufficient cause he thinks should be sold, and he shall thereupon credit the proceeds of such sale to the estate.

(3) The District Judge may cause to be paid out of any assets of which he or such officer has charge, or out of the proceeds of such assets or of any part thereof, such sums as may appear to him to be necessary for all or any of the following purposes, namely :—

- (a) the payment of the expenses of the funeral of the deceased and of obtaining probate of his will or letters of administration of his estate or a certificate under this Act,
- (b) the payment of wages due for services rendered to the deceased within three months next preceding his death by any labourer, artizan or domestic servant,
- (c) the relief of the immediate necessities of the family of the deceased, and
- (d) such acts as may be necessary for the proper care and management of the assets left by the deceased,

and nothing in section 279, section 280 or section 281 of the Indian Succession Act, 1865¹, or in any other law for the time being in force with respect to rights of priority of creditors of deceased persons shall be held to affect the validity of any payment so caused to be made.

X of 1865.

X of 1865.

VI of 1882.

X of 1865.

55. (1) Nothing contained in the Indian Succession Act, 1865¹, or the Indian Companies Act, 1882², shall be taken to supersede or affect the rights, duties and privileges of any Administrator General.

(2) Nothing contained in the Indian Succession Act, 1865¹, or in this Act shall be deemed to affect, or to have affected, any law for the time being in force relating to the moveable property under two hundred rupees in value of persons dying intestate within any of the Presidency-towns³ * * * * which shall be or has been taken charge of by the police for the purpose of safe custody.

56. Any order made under this Act by any Court shall have the same effect as a decree.

57. Notwithstanding anything in this Act, or in any other law for the time being in force, the [Central Government] may, by general or special order, direct that, where a subject of a foreign State dies in British India, and it appears that there is no one in British India other than the Administrator

Succession Act and Companies Act not to affect Administrator General, and saving of provisions of Presidency Police Acts as to petty estates.

Order of Court to be equivalent to decree.

Provision for administration by Consular Officer in case of death in

¹ See now the Indian Succession Act, 1925 (39 of 1925).

² See now the Indian Companies Act, 1913 (VII of 1913).

³ The words "or in the town of Rangoon" rep. by the A. O.

⁴ Subs. by the A. O. for "G. G. in C."

(Part VI.—Miscellaneous.)

Sir Currimbhoj Ebrahim Baronetcy. [1913 : Act IV.]

certain
circumstances
of foreign
subject.

General, entitled to apply to a Court of competent jurisdiction for letters of administration of the estate of the deceased, letters of administration shall, on the application to such Court of any Consular Officer of such foreign State, be granted to such Consular Officer on such terms and conditions as the Court may, subject to any rules made in this behalf by the ¹[Central Government] by notification in the ²[Official Gazette] think fit to impose.

58. [Division of Presidency into Provinces.] Rep. by the A. O.

Saving of
provisions of
Indian
Registration
Act, 1908.
Saving.

59. Nothing in this Act shall be deemed to affect the provisions of the Indian Registration Act, 1908.

XVI of 1908.

³[59A. The amendments⁴ of this Act which come into force on the commencement of Part III of the Government of India Act, 1935, shall not affect the jurisdiction of any court with respect to any proceedings then pending before it and shall not be construed as transferring the administration of any property or estate then in the hands of any Administrator-General to any other Administrator-General.]

²⁶ Geo.
5, c. 2.

60. [Repeals.] Rep. by the Repealing Act, 1927 (XII of 1927), s. 2 and Sch.

THE SCHEDULE.—[ENACTMENTS REPEALED.] Rep. by the Repealing Act, 1927 (XII of 1927), s. 2 and Sch.

THE SIR CURRIMBHOY EBRAHIM BARONETCY ACT, 1913.

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¹ Subs. by the A. O. for "G. G. in O."

² Subs. by the A. O. for "Gazette of India."

³ Ins. by the A. O.

⁴ I. e. the amendments by the A. O. which came into force on the 1st April, 1937, simultaneously with Part III of the G. of I. Act, 1935.

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THE FIRST SCHEDULE.

THE SECOND SCHEDULE.

ACT No. IV OF 1913.

[27th February, 1913.]

An Act for settling certain properties belonging to Sir Currimbhoy Ebrahim, Baronet, so as to accompany and support the title and dignity of a Baronet lately conferred on him by His Majesty King George V to hold to him and the heirs male of his body lawfully begotten, and to be begotten, and for other purposes connected therewith.

WHEREAS by Letters Patent King George V by the Grace of God of the Preamble. United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas King Defender of the Faith Dated at Westminster the 20th day of July 1911 in the First Year of His Reign and by Warrant under the King's Sign Manual His said Majesty made known that He of His Special Grace certain knowledge and mere motion had erected appointed and created His trusty and well-beloved Sir Currimbhoy Ebrahim of Bombay Knight

to the dignity state and degree of a Baronet and him the said Sir Currimbhoy Ebrahim for himself his heirs and successors he did erect appoint and create a Baronet of the United Kingdom of Great Britain and Ireland by the said Letters Patent to hold the said dignity state and degree of Baronet unto him the said Sir Currimbhoy Ebrahim and the heirs male of his body lawfully begotten and to be begotten and whereas the said Sir Currimbhoy Ebrahim is desirous of settling in perpetuity such property on himself and the heirs male of his body who may succeed to the title of Baronet conferred by the said Letters Patent as shall be adequate to support the dignity of the title conferred on him and them as aforesaid and whereas the said Sir Currimbhoy Ebrahim is seized of and otherwise well and sufficiently entitled to the hereditaments described in Part I of the First Schedule hereunder written situate in the Island of Bombay and the hereditaments described in Part II of the said First Schedule situate at Poona in the Presidency of Bombay and whereas the hereditaments particularly described in the Second Schedule hereunder written were respectively by the several leases particularly specified in the Third Schedule hereunder written demised unto the said Sir Currimbhoy Ebrahim his heirs executors administrators and assigns with the appurtenances thereof respectively to hold the same unto the said Sir Currimbhoy Ebrahim his heirs executors administrators and assigns from the respective days therein respectively mentioned for the respective terms thereby granted subject to the payment of the rents thereby respectively reserved and the performance and observance of the covenants on the part of the Lessee and conditions therein respectively contained and whereas the said Sir Currimbhoy Ebrahim is desirous of settling the said hereditaments and premises particularly described in the First and Second Schedules hereunder written (all which are assessed to be of the aggregate market value of Rupees (20,00,000) Twenty lakhs) upon the trusts and for the purposes hereinafter declared and contained concerning the same premises and whereas the said Sir Currimbhoy Ebrahim is desirous that heirs male of his body to whom the said title of Baronet conferred by the said Letters Patent shall descend shall at the time of such descent upon them respectively take and bear the name of "Currimbhoy Ebrahim" in lieu of any other name or names whatever which they respectively may bear at the time of such descent on them respectively and he is also desirous that the Accountant-General, Bombay, the Collector of Bombay, the Chief Presidency Magistrate of Bombay all for the time being and the person in the actual enjoyment of the title of Baronet conferred by the said Letters Patent for the time being shall be the Trustees of the said hereditaments and premises and be likewise the Trustees for carrying into execution the general purposes and powers and provisions of this Act with relation to the said hereditaments and premises and whereas the said Sir Currimbhoy Ebrahim is desirous of settling the said hereditaments and premises so intended to be settled by him as aforesaid for the purposes of supporting the dignity of the said Baronetcy upon the trusts and for the purposes hereinafter limited and declared concerning the same and whereas it is expedient that the said trusts should be declared and the

said purposes should be effected by an Act of the Council of the Governor General for making laws and regulations ; It is hereby enacted as follows :—

1. This Act may be called “The Sir Currimbhoy Ebrahim Baronetcy Short title. Act, 1913.”

2. Arthur Montague Brigstoke, Esqr., the Accountant-General of Bombay, Edward Little Sale, Esqr., the Collector of Bombay, Arthur Henry Southcote Aston, Esqr., the Chief Presidency Magistrate of Bombay, and the said Sir Currimbhoy Ebrahim, Baronet and their successors, the Accountant-General of Bombay, the Collector of Bombay, the Chief Presidency Magistrate of Bombay, all for the time being and the heir male of the body of the said Sir Currimbhoy Ebrahim to whom the said title and dignity of Baronet conferred by the said Letters Patent shall for the time being descend shall be and they are hereby created a Corporation with perpetual succession and a common seal under the style and title of “The Trustees of the Sir Currimbhoy Ebrahim Baronetcy” and the said Arthur Montague Brigstoke, Esqr., Edward Little Sale, Esqr., Arthur Henry Southcote Aston, Esqr., and Sir Currimbhoy Ebrahim, Bart. and their said successors (hereinafter styled “the Corporation”) shall be and they are hereby constituted as such Corporation the Trustees for executing the trusts powers and purposes of this Act.

3. The heirs male of the body of the said Sir Currimbhoy Ebrahim to whom the said title and dignity shall descend pursuant to the limitations of the Letters Patent whereby the said title and dignity have been granted shall take upon themselves respectively the names of “Currimbhoy Ebrahim” in lieu and place of any other name or names whatever ; and such heirs male severally and successively shall be called by the names of “Currimbhoy Ebrahim” and by these names shall name style and write themselves respectively upon all occasions whatever.

4. In case any person to whom for the time being the said title of Baronet shall have descended shall for the space of one whole year thereafter or being then under age shall for the space of one whole year after he shall attain the age of eighteen years refuse or neglect to use the names of “Currimbhoy Ebrahim” as hereinbefore enacted or in case any such person having so used these names shall for the space of one whole year discontinue to use the said names then in any or either of the said cases the estate or interest in the said hereditaments and premises hereby settled and in the hereditaments and moneys which shall hereafter become vested in the said Corporation by virtue of this Act upon the trusts and for the purposes herein declared and contained, of the person who shall so refuse or neglect to use or having used shall so discontinue to use the said names shall during the remainder of his natural life be suspended and that during any and every such suspension the benefits and trusts hereby created for the heir male of the body of the said Sir Currimbhoy Ebrahim who shall use these names shall devolve on and belong to the heir male of the body of the said Sir Currimbhoy Ebrahim who would have succeeded to the said title of Baronet conferred by the said Letters Patent on the said Sir Currimbhoy Ebrahim in the case the heir male of the body of the said Sir Currimbhoy Ebrahim so refusing or neglecting to use

Incorporation
of Trustees.

Heirs of Sir
Currimbhoy
Ebrahim
to take his
name.

Devolution
of interest
where
beneficiary
refuses,
neglects or
discontinues
to use the
names
“Currimbhoy
Ebrahim.”

or discontinuing to use the said name had departed this life; and if there shall not be at such time any such male heir of the body of the said Sir Currimbhoy Ebrahim then the hereditaments and premises hereby settled as also the hereditaments and moneys which shall hereafter become vested in the said Corporation by virtue of this Act shall be retained by the said Corporation and accumulated for the benefit of the male issue of the said Baronet that may subsequently be born and succeed to the said title and in default of any such male issue the whole of the said property shall devolve upon such person as would be entitled to the same if there had been a total failure of issue male of the said Sir Currimbhoy Ebrahim.

Vesting of
settled
property
and trusts
in respect
thereof.

5. Immediately upon the passing of this Act by force and virtue thereof the hereditaments and premises particularly described in the First Schedule hereunder written shall be vested in the said Corporation upon the trusts and for the purposes and with and subject to the powers provisions and declarations hereinafter declared and expressed and the hereditaments and premises particularly described in the Second Schedule hereunder written shall be vested in the said Corporation for all the respective residues of the respective terms granted by the said leases respectively to come and unexpired at the date of the passing of this Act upon the trusts and for the purposes and with and subject to the powers provisions and declarations hereinafter declared and expressed that is to say upon trust to permit the said Sir Currimbhoy Ebrahim for and during the term of his natural life and from and immediately after his decease to permit during the respective terms of their natural lives the successive male heirs of the body of the said Sir Currimbhoy Ebrahim who shall succeed to the title of Baronet conferred by the said Letters Patent (if he or they shall so desire) to use and occupy free of rent as their residence the hereditaments and premises particularly described in the Second part of the First Schedule hereunder written and also to use and occupy as his residence free of rent any one of the said hereditaments and premises particularly described in the First part of the First and in the Second Schedules hereunder written and to demise all or any of the remaining hereditaments and premises for any term of years not exceeding seven years to take effect in possession within three months from the date of the lease.

Payment of
rates, taxes,
etc., by
Corporation.

6. Out of the income of the premises particularly described in the First and the Second Schedules hereunder written (other than the premises which shall for the time being be used and occupied as a residence by the said Sir Currimbhoy Ebrahim or the heir male of his body to whom the said title of Baronet conferred by the said Letters Patent shall have descended) the said Corporation shall pay the rents and perform and observe the covenants by the Lessee and conditions by and in the said several indentures of lease reserved and contained and pay all rates taxes assessments dues and duties in respect of the said hereditaments and premises particularly described in the First and Second Schedules hereunder written and all buildings and erections standing thereon respectively and defray the cost of all ordinary repairs required for the purpose of maintaining such buildings in a habitable condi-

tion and of insuring the same against fire and all other outgoings of every nature whatsoever.

7. The said Corporation shall out of the income referred to in section 6 hereof remaining after making the payments in the same section mentioned form for the purposes hereinafter mentioned two funds to the credit of one of which (hereinafter referred to as the "Sinking Fund") the said Corporation shall carry every ¹[year] an amount which shall be equal to 00·61 per cent. calculated on the said sum of Rupees (20,00,000) Twenty Lacs and in the event of other hereditaments being vested in the said Corporation upon the trusts and for the purposes by and in this Act declared and contained under and by virtue of the provisions of section 25 of this Act on the aggregate of the said sum of Rupees (20,00,000) Twenty Lacs and the value of the additional hereditaments so vested and to the credit of the other of which (hereinafter referred to as the "Repairs Fund") the said Corporation shall carry every ¹[year] an amount which shall be equal to 3·72 per cent. calculated on a Capital sum of Rupees (2,00,000) Two Lacs until such fund shall amount to the sum of Rupees (2,00,000) Two Lacs.

Raising of the "Sinking Fund" and the "Repairs Fund".

8. The residue of the income referred to in section 6 hereof remaining after the payments mentioned in the same section are made and after the several sums are carried to the credit of the said Sinking Fund and the said Repairs Fund respectively as provided in section 7 hereof shall be paid to the said Sir Currimbhoy Ebrahim and the heir male of his body who shall for the time being have succeeded to and be in the enjoyment of the title of Baronet conferred by the said Letters Patent and shall be of full age for his own absolute use and benefit.

Payment of the residue of the income to the Baronet for the time being.

9. The sums which shall from time to time under the provisions of this Act be set aside for the formation respectively of the Sinking Fund and the Repairs Fund (as also the interest of the securities in which the same respectively shall be invested) shall be invested by the said Corporation in or on any stocks funds or other securities of or the principal and interest of which is guaranteed by the Government of the United Kingdom of Great Britain and Ireland or the ²[Central Government] and the said Corporation shall be at liberty as often as the same shall be necessary or thought proper by them to alter vary and change such stocks funds and securities for others of the same or like nature.

Investment of sums set apart for formation of Funds.

10. When and as often as the said Sinking Fund shall amount to the sum of Rs. (20,00,000) Twenty Lacs and in the event of additional hereditaments having been vested in the said Corporation upon the trusts and for the purposes by and in this Act declared and contained under and by virtue of the provisions of section 25 of this Act to the sum which shall be equal to the said sum of Rs. (20,00,000) Twenty Lacs and the value of the additional hereditaments so vested the said Corporation shall by force and virtue of this Act be divested of the hereditaments which shall then be vested in the said

Devolution of properties mentioned in Schedule II on full amount of Sinking Fund being raised.

¹ Subs. by s. 2 of the Sir Currimbhoy Ebrahim Baronetcy (Amendment) Act, 1917 (25 of 1917) for "six months".

² Subs. by the A. O. for "G. of I."

Corporation by force and virtue of this Act and such of them as shall be of a freehold tenure shall by force and virtue of this Act become vested absolutely and such of them as are of a leasehold tenure shall become vested for all the residues then unexpired of the several terms for which the same may be demised by the respective leases relating to them for his own use and benefit in the heir male of the body of the said Sir Currimbhoy Ebrahim who shall then have succeeded him in the title of Baronet conferred by the said Letters Patent.

Investment
of Sinking
Fund.

11. When and as often as the said Sinking Fund shall amount to the said sum of Rs. (20,00,000) Twenty Lacs and in the event of such further hereditaments having been added as mentioned in the last section to the sum which shall represent the aggregate of the said sum of Rs. (20,00,000) Twenty Lacs and the value of such additional hereditaments the said Corporation shall with all convenient despatch invest the same in the purchase of land and hereditaments situate in the Presidency of Bombay of a freehold or of a leasehold tenure provided that in the event of the purchase of premises of a leasehold tenure the leases in respect of such premises shall be renewable in perpetuity reserving a nominal rent and without any onerous conditions and covenants on the part of the Lessee.

Income of
Sinking
Fund to be
added to
Fund in
certain
cases.

12. From and after the time that the capital of the said Sinking Fund shall amount to the said sum of Rs. (20,00,000) Twenty Lacs and in the event mentioned in section 10 hereof to the sum which shall represent the aggregate of the said sum of Rs. (20,00,000) Twenty Lacs and the value of the additional hereditaments so vested as aforesaid the income thereof or of such part thereof shall not be so invested as aforesaid shall be credited to the said Sinking Fund and invested as directed by section 9 hereof and shall not form part of the capital sum on which the same accrues.

Application
of Repairs
Fund.

13. The said Repairs Fund shall be applied by and at the discretion of the said Corporation to the extraordinary structural repair of the buildings or building standing upon the said hereditaments and premises particularly described in the First and Second Schedules hereunder written or upon any other the hereditaments which may by virtue and operation of this Act at any time become vested in the said Corporation.

Repairs Fund
to be kept
up to the
sum of
Rs. 2,00,000.

14. If and so soon as any part of the said Repairs Fund shall have been applied for any of the purposes mentioned in section 13 hereof the same shall be made up again to the said sum of Rs. 2,00,000 by setting aside and carrying to the credit thereof every ¹[year] out of the income of the hereditaments and premises which shall at any such time be vested in the said Corporation by virtue of this Act remaining after making the payments mentioned in section 6 hereof an amount which shall be equal to 3.72 per cent. calculated on a Capital sum of Rs. (2,00,000) Two Lacs and also by setting aside and carrying to the credit of such fund the income of the part thereof which shall not have been so applied as directed by section 13 hereof until such fund shall again amount to the said sum of Rs. 2,00,000.

¹ Subs. by s. 2 of the Sir Currimbhoy Ebrahim Baronetcy (Amendment) Act, 1917 (25 of 1917) for "six months".

15. As often as the said Repairs Fund shall amount to the said sum of Rs. 2,00,000 and so long as the same or any part thereof is not applied to any of the purposes to which it is directed by section 13 hereof to be applied the income thereof shall be applied in defraying the cost of all ordinary repairs which may be required to the hereditaments which may for the time being be vested in the said Corporation by force and virtue of this Act and all outgoings in respect of such premises.

16. The said Corporation shall be at liberty to sell the said premises particularly described in the First and Second Schedules hereunder written and also any other hereditaments for the time being vested in them by force and virtue of this Act or any of them with the consent of the person entitled to and in the actual enjoyment of the title of Baronet conferred by the said Letters Patent and with the approval of the ¹[Provincial Government of Bombay] to be notified by a Resolution of the Government of Bombay published in the ²[Official Gazette] and also with the like consent and approval to exchange them or any of them for other lands and hereditaments in the Presidency of Bombay of a freehold or leasehold tenure and upon any such exchange to give or receive any money for equality of exchange, provided always that the leases if any, in respect of the premises proposed to be taken in exchange are renewable in perpetuity reserving a nominal rent without any onerous covenants on the part of the lessee and conditions.

17. Any such sale as aforesaid may be made either by public auction or private contract and the said Corporation shall be at liberty to make any stipulations as to title or evidence or commencement of title or otherwise in any conditions of sale or contract for sale or exchange of the hereditaments proposed to be sold or exchanged and may buy in or rescind or vary any contract for sale or exchange.

18. In the event of a sale of any of the hereditaments for the time being vested in the Corporation by force and virtue of this Act or an exchange thereof the net sale-proceeds or the moneys received for equality of exchange shall with all convenient despatch be invested in the purchase of lands and hereditaments of a freehold or leasehold tenure in the Presidency of Bombay. Provided always that in the event of the purchase of premises of a leasehold tenure the leases in respect of such premises are renewable in perpetuity reserving a nominal rent without any onerous covenants on the part of the lessees and conditions. Until so invested the same shall be invested in any of the securities mentioned in section 9 hereof and the income hereof shall be applied as directed by sections 6 and 7 hereof.

19. The lands and hereditaments so to be purchased as directed by section 11 hereof and the lands and hereditaments which may be taken in exchange under the liberty in that behalf reserved to the said Corporation by section 16 hereof or which may be purchased under the liberty in that behalf reserved to the said Corporation by sections 18 and 26 hereof shall from and immediately after the completion of the purchase or exchange vest in the said

¹ Subs. by the A. O. for "Governor of Bombay in Council".

² Subs. by the A. O. for "Bombay Govt. Gazette".

Corporation upon the trusts and for the purposes by and in this Act declared and contained of and concerning the said hereditaments and premises particularly described in the First and Second Schedules hereunder written or such of them as may then be subsisting and capable of taking effect and subject to the powers provisions and declarations in this Act contained concerning the same in the same manner and to the same effect as if such hereditaments had been expressly vested by this Act in the said Corporation upon the trusts and for the purposes in this Act declared and contained.

Application
of income of
during
minority of
Baronet.

20. The said Corporation during the minority of any heir male of the body of the said Sir Currimbhoy Ebrahim for the time being entitled to and in the enjoyment of the title of Baronet conferred by the said Letters Patent shall pay and apply for and towards the maintenance education and benefit of such Baronet during his minority so much only of the income of the hereditaments which shall be vested in them for the purposes and upon the trusts by and in this Act declared and contained, which by section 8 hereof is directed to be paid to the heir male of the body of the said Sir Currimbhoy Ebrahim entitled to and in the enjoyment of the title of Baronet conferred by the said Letters Patent who shall be of full age as the said Corporation shall in their discretion think proper and shall from time to time invest the residue thereof upon the securities specified in section 9 hereof and shall upon such Baronet attaining his age of majority pay over assign and transfer to him or as he shall direct and for his absolute benefit such investments and all accumulations thereof and in the event of the death of such Baronet before attaining his age of majority the said Corporation shall stand possessed of such investments and the accumulations thereof upon trust for the heirs of such Baronet absolutely.

Power of
Baronet
to appoint
jointures
in lieu of
maintenance
and other
claims.

21. It shall be lawful for the said Sir Currimbhoy Ebrahim and for any heir male of his body on whom the title of Baronet conferred by the said Letters Patent shall from time to time descend of full age and when in the actual enjoyment of the said title and who shall not refuse or neglect or discontinue to use for the period hereinbefore in that behalf mentioned the said names of "Currimbhoy Ebrahim" as hereinbefore enacted either before or after his marriage with any woman or women by any deed or will (but subject and without prejudice to the annuity or annuities if any which shall then be subsisting and payable by virtue of any appointment made under and in pursuance of this present power) to limit and appoint unto any woman or women whom he shall marry for her or their life or lives and for her or their maintenance or jointure or jointures in bar of any legal or customary right to maintenance or any other claim whatsoever, any annuity or annuities not exceeding in all the sum of Rs. 10,000 to commence and take effect immediately after the decease of the Baronet limiting or appointing the same to be issuing and payable out of the said income payable under this Act for his own absolute use and benefit to the heir male of the body of the said Sir Currimbhoy Ebrahim on whom the said title of Baronet conferred by the said Letters Patent shall have descended and who shall be of full age and to be paid and payable by equal half-yearly payments the first of such half-

yearly payments to be made on the first half-yearly day after the decease of the Baronet who shall have appointed such annuity ; Provided always that in case any person on whom such title shall descend shall have refused or neglected to use the said names of " Currimbhoy Ebrahim " or shall discontinue to use such names for a year during his life every such limitation and appointment either previously or afterwards made shall be and become inoperative and invalid and no such annuity thereby created or appointed shall take effect and be payable.

22. Provided always that such income as aforesaid shall not at one and the same time be subject to the payment of more than the yearly sum of Rs. 20,000 for or in respect of any jointure or jointures which shall be made in pursuance of the power hereinbefore contained, so that if by virtue of or under the same power the said income would in case this present provision had not been inserted be charged at any one time with a greater yearly sum for jointures in the whole than the yearly sum of Rs. 20,000 the yearly sum which shall occasion such excess or such part thereof as shall occasion the same shall during the time of such excess abate and not be payable.

Limit of total amount of such jointures chargeable on income.

23. If any heir male of the body of the said Sir Currimbhoy Ebrahim shall succeed to the title of Baronet conferred by the said Letters Patent while he is still a minor under the age of eighteen years and shall thereafter die without attaining the age of majority leaving a widow him surviving the said Corporation shall out of the said income during the minority of such widow apply for and towards the maintenance education and benefit of such widow while she continues to be a widow such sum not exceeding Rs. 500 per month as the said Corporation in their discretion think proper and shall after such widow shall attain her age of majority and so long as she continues to be a widow pay to her for her own absolute use and benefit the yearly sum of Rs. 10,000 payable half-yearly the first of such half-yearly payments to be made on the 1st half-yearly day after she shall attain her age of majority.

Provision for widow of Baronet dying under age.

24. In estimating for the purposes of section 22 hereof the total amount payable out of the said income for jointure the amount directed to be paid by section 23 hereof shall be deemed to be a jointure settled under section 21 hereof.

Amount payable under section 23 to be deemed a jointure for purposes of section 22.

25. If at the time when the said Sinking Fund shall first amount to the sum of Rs. (20,00,000) Twenty Lacs (but not afterwards) the heir male of the body of the said Sir Currimbhoy Ebrahim who shall then have succeeded to the said title of Baronet conferred by the said Letters Patent shall be desirous of vesting in the said Corporation other lands and hereditaments upon the trusts and for the purposes herein declared and contained concerning the said hereditaments and premises particularly described in the First and Second Schedules hereunder written and subject to the powers provisions and declarations herein contained and for that purpose and with that intent shall at his own expense vest in the said Corporation such lands hereditaments and premises then the said Corporation may with the previous con-

Vesting in Corporation of lands and hereditaments other than those described in the Schedules.

sent of the ¹[Provincial Government of Bombay] notified as aforesaid accept such lands hereditaments and premises and the same shall thenceforth be held by the said Corporation upon the same trusts and for the same purposes and subject to the same powers provisions and declarations as are by and in this Act declared and contained with regard to the said hereditaments and premises particularly described in the First and Second Schedules hereunder written or upon such of them as shall then be subsisting and capable of taking effect in the same manner and to the same effect as if such hereditaments had been expressly vested by this Act in the said Corporation upon the trusts and for the purposes in this Act declared and contained. Provided always that the total value of the additional premises so vested in the said Corporation shall not exceed Rs. (20,00,000) Twenty Lacs. Provided also that if at such date the person who shall then have succeeded to the said title be a minor under the age of 18 years then he shall be entitled to exercise the liberty hereby reserved at any time before the expiration of one year after he shall have attained his age of majority.

Application
of insurance
moneys in
respect of
properties
destroyed
or damaged
by fire.

26. In case any of the hereditaments which shall at any time be vested in the said Corporation shall be destroyed or damaged by fire the moneys received in respect of such insurance shall in case the premises so destroyed or damaged are any of the hereditaments and premises particularly described in the Second Schedule hereunder written or are comprised in any indenture of lease be applied in accordance with the provisions in that behalf contained in the lease by which the same are demised and in case of any other premises be applied either in rebuilding or reinstating the premises so destroyed or damaged by fire or upon the application of the person for the time being entitled to and in the enjoyment of the said title of Baronet and with the consent of the ¹[Provincial Government of Bombay] notified as aforesaid may be laid out in the purchase of other hereditaments in the Presidency of Bombay of a freehold or of a leasehold tenure provided that the leases in respect of such premises are renewable in perpetuity reserving a nominal rent without any onerous covenants on the part of the lessee and conditions. In the event of such purchase the hereditaments so purchased shall immediately from and after the completion of the purchase thereof vest in the said Corporation upon the trusts and for the purposes by and in this Act declared and contained of and concerning the hereditaments and premises particularly described in the First and Second Schedules hereunder written or such of them as may then be subsisting and capable of taking effect and subject to the powers provisions and declarations in this Act contained concerning the same in the same manner and to the same effect as if such hereditaments had expressly been vested by this Act in the said Corporation upon the trust and for the purposes in this Act declared and contained. Until such insurance moneys shall be so laid out the said Corporation shall invest the same in one or more of the securities specified in section 9 hereof and

¹ Suba. by the A. O. for " Governor of Bombay in Council ".

the income thereof shall be applied as the income of the premises so destroyed or damaged.

27. Upon failure and in default of heirs male of the body of the said Sir Currimbhoy Ebrahim to whom the same title of Baronet may descend the said Corporation shall stand possessed of the said hereditaments and premises particularly described in the First Schedule hereunder written and of any other hereditaments of a freehold tenure and of the funds which may then be vested in them by virtue and operation of this Act upon trust for the heirs of the last Baronet absolutely and shall also stand possessed of the said hereditaments and premises particularly described in the Second Schedule hereunder written or such of them as may then be still vested in the said Corporation and any other hereditaments of a leasehold tenure which may then be vested in the said Corporation by virtue of this Act upon trust for the heirs of the last Baronet for all the then residues of the terms granted by the leases by which the same are demised.

Ultimate trust in favour of heir on extinction of Baronetcy.

28. It shall be lawful for the said Corporation out of any moneys which shall come to their hands by virtue of the trusts and provisions of this Act to retain and reimburse themselves all costs expenses and damages which they shall or may sustain expend or disburse in or about the execution of the trusts powers and provisions herein contained or in relation thereto.

Reimbursement of expenses of Corporation.

29. The actual management of the hereditaments for the time being vested in the said Corporation including the collection of rents and carrying out repairs shall be in the hands of the person in the actual enjoyment for the time being of the said title of Baronet conferred by the said Letters Patent being of full age, subject nevertheless to the control and supervision of the said Corporation.

Management of hereditaments vested in Corporation.

30. Saving always to the King's Most Excellent Majesty, his heirs and successors and to all and every other person and persons bodies politic and corporate and his her and their respective heirs executors and administrators and successors and every of them (other than and except the said Sir Currimbhoy Ebrahim his devisees and heirs and assigns) all such estate right title interest claim and demand whatsoever of into out of or upon the said hereditaments and premises particularly described in the First and Second Schedules hereunder written or any part or parts thereof respectively as they every or any of them had before the passing of this Act and would could or might have had held or enjoyed in case this Act had not been passed.

Saving of existing rights.

THE FIRST SCHEDULE.

PART I.

First:—All that piece or parcel of land or ground with the messuage tenement or bungalow standing thereon situate lying and being on the Western side of Pedder Road Cumballa Hill near Mahalaxmi in the Island of Bombay in the Sub-District of the Registrar of Bombay and containing by admeasurement two thousand one hundred and forty-seven square yards or thereabouts be the same little more or less and bounded as follows that is to say

on or towards the North by a loose stone Gudya and beyond that the vacant land of Trimbuck Jugonnath on or towards the East by the Government ground and beyond that by the said Pedder Road on or towards the West and South by a loose stone Gudya and beyond that by the vacant land belonging to Nowroji Jehangir Gamadia registered by the Collector of Land Revenue under Old No. 616 New No. 2861 Old Survey No. 81 New Survey Nos. 7075, 7113, 7119 and assessed by the Municipality under Street Nos. 102, 112 Ward No. 3494.

Secondly :—All that piece of Government ground with the messuage or dwelling house standing thereon situate on the East side of Shamjee Hassajee Street now called Samuel Street in the Registration Sub-District of Bombay containing by admeasurement two hundred and eighteen square yards or thereabouts assessed under Ward B. No. 1667 and Street 165-167 and registered in the books of the Collector of Land Revenue under Old No. 1023 and New No. 6751 Old Survey No. 198 and New Survey No. 2788 and bounded on the East by a Sweeper's passage on the West by Shamji Hassajee Street or Samuel Street on the North by the property formerly of Khan Mahomed Habibbhoy but now of Ebrahim Hassam and on the South by the property formerly of Cassum Natha but now of Currimbhoy Ebrahim.

PART II.

All that piece or parcel of vacant land or ground situate lying and being in the Civil Lines of Poona in the Registration Sub-District of Haveli containing by admeasurement three acres twenty-eight Gunthas and forty-one square yards being equal to seventeen thousand nine hundred and forty-nine square yards or thereabouts being portion of land registered in the Books of the Collector under Old Survey No. 94 and the New No. 126 and which said land is bounded as follows that is to say on or towards the East partly by the land belonging to K. B. Dastoor Hoshang Jamaspa and partly by the road leading from Bund garden to the City on or towards the West by the land belonging to Narayan bin Raghoji Dhala on or towards the North by the property of Hari Rowji and on or towards the South by the road leading to Record Hall and beyond that by the property of Desai Hari Prasad together with bungalow and buildings standing thereon.

THE SECOND SCHEDULE.

First :—All that piece of land situate on the Wodehouse Road Estate of the Improvement Trust at the junction of the Wodehouse Road and Colaba Causeway on the Esplanade in the City and Island and Sub-Registration District of Bombay which has been computed to contain an area of three thousand four hundred and seventy-six square yards or thereabouts and which is bounded on the West by Wodehouse Road aforesaid on the East by Colaba Causeway on the North by the junction of the said two roads and

on the South by the land known as Plots Nos. 11A and 11C on the said Improvement Trust Estate which said piece of land is known as Plot No. 11B. Wodehouse Road and which said premises are assessed by the Collector of Land Revenue under New Survey No. 9561 and are assessed by the Municipality under Ward No. 886 (1-3) Street Nos. 16, 16B together with the buildings now erected and built thereon and known as Hotel Majestic.

Secondly :—All that piece of Leasehold Land situate on the East side of a New Road on the Esplanade in the City and Island and Sub-Registration District of Bombay which has been computed to contain the total area of one thousand five hundred and seventeen square yards or thereabouts and which is bounded on the North by a passage on the East by vacant land of the Bombay Improvement Trust on the South by Plot No. 6 Wellington Lines and on the West by a New Road and which said piece of land is known as Plot No. 7 Wellington Lines and which premises are assessed by the Collector of Land Revenue under part of New Survey Nos. 90562 and 90563 and are assessed by the Municipality under Ward No. 1301 (7) Street No. 3 together with the buildings and premises erected and built thereon and which premises are known as Meher Mansions.

Thirdly :—All that piece of Land situate on the East side of a New Road on the Esplanade in the City and Island and Sub-Registration District of Bombay which has been computed to contain a total area of one thousand and five hundred square yards or thereabouts and which is bounded on the North by Plot No. 4 Wellington Lines on the East by the land of the Bombay Improvement Trust proposed to be laid out as a central garden on the South by Plot No. 2 Wellington Lines and on the West by the New Road aforesaid which said piece of land is known as Plot No. 3 Wellington Lines and which said premises are assessed by the Collector of Land Revenue under New Survey No. 9562 and are assessed by the Municipality under Ward No. 1301 (3) Street No. 3B together with the buildings and premises now erected and built thereon.

Fourthly :—All that piece of Leasehold Land situate on the Colaba Reclamation in the Lower Colaba Division of A Ward in the City and Island and Sub-Registration District of Bombay which piece of land has been computed to contain a total area of two thousand four hundred and forty-nine square yards or thereabouts be the same more or less and which is bounded on the North-East by Fazal Road on the South-East by a 40 Feet Road and on the South-West by Plots Nos. 5 and 6 belonging to Fazalbhoy Currimbhoy Ebrahim and on the North-West by Cuffe Parade which said piece of land is known as Plots Nos. 6 and 7 on the Colaba Reclamation and which said premises are assessed by the Collector of Land Revenue under New Survey No. 9765 and are assessed by the Municipality under Ward Nos. 120, 225 (11) Street No. 12 J together with all buildings and premises now erected and built thereon.

Fifthly :—All that piece of land situate on the Colaba Reclamation in the Lower Colaba Division of A Ward in the City and Island and Sub-Registration District of Bombay which piece of land has been computed to contain

White Phosphorus Matches Prohibition. [1913 : Act V.]

a total area of 2,452 square yards or thereabouts and bounded on the North-East by Plots Nos. 6-7 on the South-East by a 40 Feet Road on the South-West by Khatoo Road and on the North-West by Cuffe Parade which said piece of land is known as Plots Nos. 5-6 on the Colaba Reclamation and which said premises are assessed by the Collector of Land Revenue under New Survey No. 9765 and are assessed by the Municipality under Ward No. 225 (10) Street No. 12 I together with all buildings and premises now erected and built thereon.

THE WHITE PHOSPHORUS MATCHES PROHIBITION ACT, 1913.

ACT No. V OF 1913.¹

[7th March, 1913.]

An Act to prohibit the importation, manufacture and sale of matches made with white phosphorus.

WHEREAS it is expedient to prohibit the importation, manufacture and sale of matches made with white phosphorus ; It is hereby enacted as follows :—

Short title,
extent and
commence-
ment.

1. (1) This Act may be called the White Phosphorus Matches Prohibition Act, 1913.

(2) It extends to the whole of British India ; and

(3) It shall come into force on the first day of July, 1913, with the exception of section 6, which shall come into force on the first day of July, 1914.

Definition.

2. In this Act, "white phosphorus" means the substance commonly known as white or yellow phosphorus.

3. [Prohibition of importation by addition to section 18, Act VIII of 1878.] Rep. by the Repealing Act, 1938 (I of 1938), s. 2 and Sch.

Prohibition
of use of
white phos-
phorus in
manufacture
of matches.

4. (1) No person shall use white phosphorus in the manufacture of matches.

(2) Any person who uses, or permits the use by any person under his control, of white phosphorus in the manufacture of matches, shall be punishable with fine which may extend to two hundred rupees.

Power of
Inspector of
Factories
to take
samples of
material
used in
manufac-
ture.

5. (1) Every person who manufactures matches shall allow an Inspector of Factories appointed under the Indian Factories Act, 1911², at any time XII of 1911. to take for analysis sufficient samples of any material in use or mixed for use, in such manufacture :

¹ For Statement of Objects and Reasons, see Gazette of India, 1912, Pt. V, p. 220 ; for Report of Select Committee, see *ibid.*, 1913, Pt. V, p. 35 ; and for Proceedings in Council, see *ibid.*, 1913, Pt. VI, pp. 16, 64 and 146.

This Act has been declared to be in force in British Baluchistan by the British Baluchistan Laws Regulation, 1913 (2 of 1913), s. 3 ; in the Sonthal Parganas by Notification under s. 3 of the Sonthal Parganas Settlement Regulation (3 of 1872), see B. & O. Gazette, 1914, Pt. II, p. 413.

² See now the Indian Factories Act, 1934 (25 of 1934).

Provided that any such person may, at the time the sample is taken, and on providing the necessary appliances, require the Inspector to divide the sample so taken into two parts, and to mark, seal and deliver to him one part.

(2) Any person who refuses to permit any such Inspector of Factories as aforesaid to take a sample, in accordance with the provisions of sub-section (1), shall be punishable with fine which may extend to two hundred rupees.

6. (1) No person shall sell, or offer or expose for sale, or have in his possession for the purposes of sale, any matches made with white phosphorus. Prohibition of sale.

(2) Any person who contravenes the provisions of sub-section (1) may, on complaint to a Presidency Magistrate, Sub-divisional Magistrate or Magistrate of the first class, be ordered to forfeit any such matches in his possession, and any matches so forfeited shall be destroyed or otherwise dealt with as the Magistrate may direct.

THE MUSSALMAN WAKF VALIDATING ACT, 1913.

ACT No. VI OF 1913.¹

[7th March, 1913.]

An Act to declare the rights of Mussalmans to make settlements of property by way of "wakf" in favour of their families, children and descendants.

WHEREAS doubts have arisen regarding the validity of wakfs created by persons professing the Mussalman faith in favour of themselves, their families, children and descendants and ultimately for the benefit of the poor or for other religious, pious or charitable purposes ; and whereas it is expedient to remove such doubts ; It is hereby enacted as follows :—

1. (1) This Act may be called the Mussalman Wakf Validating Act, 1913. Short title and extent.

(2) It extends to the whole of British India.

¹ For Statement of Objects and Reasons, see Gazette of India, 1911, Pt. V, p. 107 ; for Report of Select Committee, see *ibid.*, 1913, Pt. V, p. 39 ; and for Proceedings in Council, see *ibid.*, 1911, Pt. VI, p. 402, and *ibid.*, 1913, Pt. VI, pp. 29, 65 and 147.

This Act has been declared to be in force in the Sonthal Parganas by Notification under s. 3 of the Sonthal Parganas Settlement Regulation (3 of 1872), see B. & O. Gazette, 1914, Pt. II, p. 413.

It has been applied to wakfs created before its commencement, see the Mussalman Wakf Validating Act, 1930 (32 of 1930), s. 2.

2. In this Act, unless there is anything repugnant in the subject or con- Definitions.
text,—

- (1) "Wakf" means the permanent dedication by a person professing the Mussalman faith of any property for any purpose recognized by the Mussalman law as religious, pious or charitable.
- (2) "Hanafi Mussalman" means a follower of the Mussalman faith who conforms to the tenets and doctrines of the Hanafi school of Mussalman law.

3. It shall be lawful for any person professing the Mussalman faith to create a wakf which in all other respects is in accordance with the provisions of Mussalman law, for the following among other purposes :—

Power of
Mussalmans
to create
certain
wakfs.

- (a) for the maintenance and support wholly or partially of his family, children or descendants, and
- (b) where the person creating a wakf is a Hanafi Mussalman, also for his own maintenance and support during his lifetime or for the payment of his debts out of the rents and profits of the property dedicated :

Provided that the ultimate benefit is in such cases expressly or impliedly reserved for the poor or for any other purpose recognised by the Mussalman law as a religious, pious or charitable purpose of a permanent character.

4. No such wakf shall be deemed to be invalid merely because the benefit reserved therein for the poor or other religious, pious or charitable purpose of a permanent nature is postponed until after the extinction of the family, children or descendants of the person creating the wakf.

Wakfs not
to be invalid
by reason of
remoteness
of benefit to
poor, etc.
Saving of
local and
sectarian
custom.

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THE INDIAN COMPANIES ACT, 1913.

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APPENDIX I.

APPENDIX II.

ACT No. VII OF 1913.¹

[27th March, 1913.]

An Act to consolidate and amend the law relating to Trading Companies and other Associations.

WHEREAS it is expedient to consolidate and amend the law relating to Trading Companies and other Associations ; It is hereby enacted as follows :—

PART I.

PRELIMINARY.

Short title,
commence-
ment and
extent.

1. (1) This Act may be called the Indian Companies Act, 1913.

(2) It shall come into force on the first day of April 1914 ; and

(3) It extends to the whole of British India including British Baluchistan and the Santhal Parganas.

Definitions.

²[2. (1)] In this Act, unless there is anything repugnant in the subject or context,—

(1) “ articles ” means the articles of association of a company as originally framed or as altered by special resolution, including, so far as they apply to the company, the regulations contained (as the case may be) in ³Table B in the Schedule annexed to

¹ For Statement of Objects and Reasons, see Gazette of India, 1912, Pt. V, p. 151 ; for Report of Select Committee, see *ibid.*, 1913, Pt. V, p. 45 ; and for Proceedings in Council, see *ibid.*, 1912, Pt. VI, p. 586, and *ibid.*, 1913, Pt. VI, pp. 6, 106 and 300.

The provisions of this Act do not apply to registered Co-operative Societies in Madras, Bihar and Orissa : see the Madras Co-operative Societies Act, 1932 (Mad. 6 of 1932), s. 61, and the B. & O. Co-operative Societies Act, 1935 (B. & O. 6 of 1935), s. 3.

² The original s. 2 was re-numbered as sub-section (1) of that section by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 2.

³ See Appendix I, p. 434, *infra*.

(Part I.—Preliminary.)

VI of 1882.

Act No. XIX of 1857 or in ¹Table A in the First Schedule annexed to the Indian Companies Act, 1882, or in Table A in the First Schedule annexed to this Act :

- (2) "Company" means a company formed and registered under this Act or an existing company :
- (3) "the Court" means the Court having jurisdiction under this Act :
- (4) "debenture" includes debenture stock :
- (5) "director" includes any person occupying the position of a director by whatever name called :
- (6) "District Court" means the principal Civil Court of original jurisdiction in a district, but does not include a High Court in the exercise of its ordinary original civil jurisdiction :
- (7) "existing company" means a company formed and registered under the ²Indian Companies Act, 1866, or under any Act or Acts repealed thereby, or under the Indian Companies Act, 1882 :

X of 1866.

VI of 1882.

- (8) "Insurance company" means a company that carries on the business of insurance either solely or in common with any other business or businesses :
- ³[(9) "manager" means a person who, subject to the control and direction of the directors has the management of the whole affairs of a company, and includes a director or any other person occupying the position of a manager by whatever name called and whether under a contract of service or not :
- (9A) "managing agent" means a person, firm or company entitled to the management of the whole affairs of a company by virtue of an agreement with the company, and under the control and direction of the directors except to the extent, if any, otherwise provided for in the agreement and includes any person, firm or company occupying such position by whatever name called :

Explanation.—If a person occupying the position of a managing agent calls himself a manager he shall nevertheless be regarded as managing agent and not as manager for the purposes of this Act.]

- (10) "memorandum" means the memorandum of association of a company as originally framed or as altered in pursuance of the provisions of this Act :

¹ See Appendix II, p. 444, *infra*.

² Rep. by the Indian Companies Act, 1882 (6 of 1882), which was in turn rep. by this Act.

³ Cls. (9) and (9A) subs. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 2, for original cl. (9).

(Part I.—Preliminary.)

(11) "officer" includes any director, ¹[managing agent,] manager or secretary but, save in sections 235, 236 and 237, does not include an auditor :

(12) "prescribed" means, as respects the provisions of this Act relating to the winding up of companies, prescribed by rules made by the High Court, and, as respects the other provisions of this Act, prescribed by the ²[Central Government] :

³[(13) "private company" means a company which by its articles—

(a) restricts the right to transfer the shares, if any ; and

(b) limits the number of its members to fifty not including persons who are in the employment of the company ; and

(c) prohibits any invitation to the public to subscribe for the shares, if any, or debentures of the company :

Provided that where two or more persons hold one or more shares in a company jointly they shall, for the purposes of this definition, be treated as a single member :]

¹[(13A) "public company" means a company incorporated under this Act or under the Indian Companies Act, 1882, or under the VI of 1882. Indian Companies Act, 1866, or under any Act, repealed thereby, X of 1866. which is not a private company :]

(14) "prospectus" means any prospectus, notice, circular, advertisement or other invitation, offering to the public for subscription or purchase any shares or debentures of a company ¹[but shall not include any trade advertisement which shows on the face of it that a formal prospectus has been prepared and filed :]

(15) "the registrar" means a registrar or assistant registrar performing under this Act the duty of registration of companies : and

(16) "share" means share in the share capital of the company, and includes stock except when a distinction between stock and shares is expressed or implied :

⁴[(17) "trading corporation" means a trading corporation within the meaning of Item 33 in List I in the Seventh Schedule to the Government of India Act, 1935.]

26 Geo. 5,
c. 2.

¹[(2) Where the assets of a company consist in whole or in part of shares in another company, whether held directly or through a nominee and whether that other company is a company within the meaning of this Act or not, and

(a) the amount of the shares so held is at the time when the accounts of the holding company are made up more than fifty per cent. of the issued share capital of that other company or such as to

¹ Ins. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 2.

² Subs. by the A. O. for "G. G. in C."

³ Subs. by Act 22 of 1936, s. 2, for original cl. (13).

⁴ Ins. by the A. O.

(Part I.—Preliminary.)

entitle the company to more than fifty per cent. of the voting power in that other company, or

- (b) the company has power (not being power vested in it by virtue only of the provisions of a debenture trust deed or by virtue of shares issued to it for the purpose in pursuance of those provisions) directly or indirectly to appoint the majority of the directors of that other company,

that other company shall be deemed to be a subsidiary company within the meaning of this Act, and the expression "subsidiary company" in this Act means a company in the case of which the conditions of this sub-section are satisfied and includes a subsidiary company of such company :

Provided that where a company the ordinary business of which includes the lending of money holds shares in another company as security only, no account shall, for the purpose of determining under this section whether that other company is a subsidiary company, be taken of the shares so held.]

¹[2A. Notwithstanding anything in the last preceding section, a company which was ²immediately before the separation of Burma and Aden from India a company as defined by the said section, being a company the registered office whereof is in Burma or Aden,—

Provisions
as to
companies
registered in
Burma or
Aden before
separation
from India.

- (a) shall be deemed for the purposes of this Act to be a company registered and incorporated outside British India, and
- (b) shall not, unless the subject matter or context so requires, be included in the expressions "company", "existing company", "public company", and "private company":

Provided that—

- (i) for the purposes of section 277 of this Act such a company shall, for a period of six months from the separation, be deemed to be a company incorporated and registered in British India ;
- (ii) the separation of Burma and Aden from India shall not render valid any mortgage or charge which, immediately before that date, was void against the liquidator or creditors of such a company.]

3. (1) The Court having jurisdiction under this Act shall be the High Court having jurisdiction in the place at which the registered office of the company is situate :

Jurisdiction
of the
Courts.

Provided that the ³[Central Government] may, by notification in the ⁴[Official Gazette] and subject to such restrictions and conditions as it thinks fit, empower any District Court to exercise all or any of the jurisdiction by this Act conferred upon the Court, and in that case such District Court shall, as regards the jurisdiction so conferred, be the Court in respect of all companies having their registered offices in the district.

¹ Ins. by the A. O.

² I.e., immediately before the 1st April, 1937.

³ Subs. by the A. O. for "L. G."

⁴ Subs. by the A. O. for "local official Gazette".

(Part I.—Preliminary. Part II.—Constitution and Incorporation.)

(2) For the purposes of jurisdiction to wind up companies, the expression "registered office" means the place which has longest been the registered office of the company during the six months immediately preceding the presentation of the petition for winding up.

(3) Nothing in this section shall invalidate a proceeding by reason of its being taken in a wrong Court.

PART II.

CONSTITUTION AND INCORPORATION.

Prohibition
of partner-
ships exceed-
ing certain
number.

4. (1) No company, association or partnership consisting of more than ten persons shall be formed for the purpose of carrying on the business of banking unless it is registered as a company under this Act, or is formed in pursuance of an Act of Parliament or some other ¹[Indian law] or of Royal Charter or Letters Patent.

(2) No company, association or partnership consisting of more than twenty persons shall be formed for the purpose of carrying on any other business that has for its object the acquisition of gain by the company, association or partnership, or by the individual members thereof, unless it is registered as a company under this Act, or is formed in pursuance of an Act of Parliament or some other ¹[Indian law] or of Royal Charter or Letters Patent.

²(3) This section shall not apply to a joint family carrying on joint family trade or business and where two or more such joint families form a partnership, in computing the number of persons for the purposes of this section, minor members of such families shall be excluded.

(4) Every member of a company, association or partnership carrying on business in contravention of this section shall be personally liable for all liabilities incurred in such business.

(5) Any person who is a member of a company, association or partnership formed in contravention of this section shall be punishable with fine not exceeding one thousand rupees.]

Memorandum of Association.

Mode of
forming in-
corporated
Company.

5. Any seven or more persons (or, where the company to be formed will be a private company, any two or more persons) associated for any lawful purpose may, by subscribing their names to a memorandum of association and otherwise complying with the requirements of this Act in respect of registration,

¹ Subs. by the A. O. for "Act of the G. G. in C."

² Ins. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 3.

(Part II.—Constitution and Incorporation.)

form an incorporated company, with or without limited liability (that is to say), either—

- (i) a company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them (in this Act termed a company limited by shares); or
- (ii) a company having the liability of its members limited by the memorandum to such amount as the members may respectively thereby undertake to contribute to the assets of the company in the event of its being wound up (in this Act termed a company limited by guarantee); or
- (iii) a company not having any limit on the liability of its members (in this Act termed an unlimited company).

6. In the case of a company limited by shares—

Memorandum
of company
limited by
shares.

(1) the memorandum shall state—

- (i) the name of the company, with “ Limited ” as the last word in its name ;
 - (ii) the province in which the registered office of the company is to be situate ;
 - (iii) the objects of the company, ¹[and, except in the case of trading corporations, the territories to which they extend] ;
 - (iv) that the liability of the members is limited ;
 - (v) the amount of share capital with which the company proposes to be registered, and the division thereof into shares of a fixed amount :
- (2) no subscriber of the memorandum shall take less than one share :
- (3) each subscriber shall write opposite to his name the number of shares he takes.

7. In the case of a company limited by guarantee—

Memorandum
of company
limited by
guarantee.

(1) the memorandum shall state—

- (i) the name of the company, with “ Limited ” as the last word in its name ;
- (ii) the province in which the registered office of the company is to be situate ;
- (iii) the objects of the company, ¹[and, except in the case of trading corporations, the territories to which they extend] ;
- (iv) that the liability of the members is limited ;
- (v) that each member undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before he

¹ Ins. by the A. O.

(Part II.—Constitution and Incorporation.)

ceases to be a member, and of the costs, charges and expenses of winding up, and for adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount :

(2) if the company has a share capital—

- (i) the memorandum shall also state the amount of share capital with which the company proposes to be registered and the division thereof into shares of a fixed amount ;
- (ii) no subscriber of the memorandum shall take less than one share ;
- (iii) each subscriber shall write opposite to his name the number of shares he takes.

Memorandum
of unlimited
company.

8. In the case of an unlimited company—

(1) the memorandum shall state—

- (i) the name of the company ;
- (ii) the province in which the registered office of the company is to be situate ;
- (iii) the objects of the company, ¹[and, except in the case of trading corporations, the territories to which they extend] :

(2) if the company has a share capital—

- (i) no subscriber of the memorandum shall take less than one share ;
- (ii) each subscriber shall write opposite to his name the number of shares he takes.

Printing and
signature of
memorandum.

²[9. The memorandum shall—

- (a) be printed,
- (b) be divided into paragraphs numbered consecutively, and
- (c) be signed by each subscriber (who shall add his address and description) in the presence of at least one witness who shall attest the signature.]

Restriction
on altera-
tion of
memo-
randum.

10. A company shall not alter the conditions contained in its memorandum except in the cases and in the mode and to the extent for which express provision is made in this Act :

³[Provided that any provision in the memorandum relating to the appointment of a manager or managing agent and other matters of a like nature incidental or subsidiary to the main objects of the company, shall not be deemed to be such condition.]

¹ Ins. by the A. O.

² Subs. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 4, for the original s. 9.

³ Ins. by s. 5, *ibid.*

(Part II.—Constitution and Incorporation.)

11. (1) A company shall not be registered by a name identical with that by which a company in existence is already registered, or so nearly resembling that name as to be calculated to deceive, except where the company in existence is in the course of being dissolved and signifies its consent in such manner as the registrar requires. Name of company and change of name.

(2) If a company, through inadvertence or otherwise, is, without such consent as aforesaid, registered by a name identical with that by which a company in existence is previously registered, or so nearly resembling it as to be calculated to deceive, the first-mentioned company may, with the sanction of the registrar, change its name.

¹[(3) Except with the previous consent in writing of the ²[Central Government], no company shall be registered by a name which—

(a) contains any of the following words, namely, "Crown", "Emperor", "Empire", "Empress", "Federal", "Imperial", "King", "Queen", "Royal", "State", "Reserve Bank", "Bank of Bengal", "Bank of Madras", "Bank of Bombay", or any word which suggests or is calculated to suggest the patronage of His Majesty or of any member of the Royal Family or any connection with His Majesty's Government or any department thereof; or

(b) contains the word "Municipal" or "Chartered" or any word which suggests or is calculated to suggest connection with any municipality or other local authority or with any society or body incorporated by Royal Charter :

Provided that nothing in this sub-section shall apply to companies registered before the commencement of this Act.]

(4) Any company may, by special resolution and subject to the approval of the ³[Central Government] signified in writing, * * * * * change its name.

(5) Where a company changes its name, the registrar shall enter the new name on the register in place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case. On the issue of such a certificate, the change of name shall be complete.

(6) The change of name shall not affect any rights or obligations of the company, or render defective any legal proceedings by or against the company ; and any legal proceedings that might have been continued or commenced against it by its former name may be continued or commenced against it by its new name.

12. (1) Subject to the provisions of this Act, a company may, by special resolution, alter the provisions of its memorandum so as to change the place Alteration of memorandum.

¹ Subs. by the Indian Companies (Amendment) Act, 1936 (23 of 1936), s. 6 for the original sub-section.

² Subs. by the A. O. for "G. G. in C."

³ Subs. by the A. O. for "L. G."

⁴ The words "under the hand of one of the Secretaries to such Govt." rep. by the A. O.

(Part II.—Constitution and Incorporation.)

of the registered office from one province to another, or with respect to the objects of the company, so far as may be required to enable it—

- (a) to carry on its business more economically or more efficiently ; or
 - (b) to attain its main purpose by new or improved means ; or
 - (c) to enlarge or change the local area of its operations ; or
 - (d) to carry on some business which under existing circumstances may conveniently or advantageously be combined with the business of the company ; or
 - (e) to restrict or abandon any of the objects specified in the memorandum ; ¹[or
 - (f) to sell or dispose of the whole or any part of the undertaking of the company ; or
 - (g) to amalgamate with any other company or body of persons].
- (2) The alteration shall not take effect until and except in so far as it is confirmed by the Court on petition.

(3) Before confirming the alteration, the Court must be satisfied—

- (a) that sufficient notice has been given to every holder of debentures of the company, and to any persons or class of persons whose interests will, in the opinion of the Court, be affected by the alteration ; and
- (b) that, with respect to every creditor who in the opinion of the Court is entitled to object, and who signifies his objection in manner directed by the Court, either his consent to the alteration has been obtained or his debt or claim has been discharged or has been determined, or has been secured to the satisfaction of the Court :

Provided that the Court may, in the case of any person or class, for special reasons, dispense with the notice required by this section.

Power of
Court when
confirming
alteration.

13. The Court may make an order confirming the alteration either wholly or in part, and on such terms and conditions as it thinks fit, and may make such order as to costs as it thinks proper.

Exercise of
discretion by
Court.

14. The Court shall, in exercising its discretion under sections 12 and 13, have regard to the rights and interests of the members of the company or of any class of them, as well as to the rights and interests of the creditors, and may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the Court for the purchase of the interests of dissentient members ; and may give such directions and make such orders as it may think expedient for facilitating or carrying into effect any such arrangement :

Provided that no part of the capital of the company may be expended in any such purchase.

¹ Ins. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 7.

(Part II.—Constitution and Incorporation.)

15. (1) A certified copy of the order confirming the alteration, together with a printed copy of the memorandum as altered, shall, within three months from the date of the order, be filed by the company with the registrar, and he shall register the same, and shall certify the registration under his hand, and the certificate shall be conclusive evidence that all the requirements of this Act with respect to the alteration and the confirmation thereof have been complied with, and thenceforth the memorandum so altered shall be the memorandum of the company.

Procedure on
confirmation
of the altera-
tion.

(2) Where the alteration involves a transfer of the registered office from one province to another, a certified copy of the order confirming such change shall be filed by the company with the registrar in each of such provinces, and each of such registrars shall register the same, and shall certify under his hand the registration thereof, and the registrar for the province from which such office is transferred shall send to the registrar for the other province all documents relating to the company registered or filed in his office.

(3) The Court may by order at any time extend the time for the filing of documents with the registrar under this section for such period as the Court thinks proper.

16. No such alteration shall have any operation until registration thereof has been duly effected in accordance with the provisions of section 15, and if such registration is not effected within three months next after the date of the order of the Court confirming the alteration, or within such further time as may be allowed by the Court in accordance with the provisions of section 15, such alteration and order and all proceedings connected therewith shall, at the expiration of such period of three months or such further time, as the case may be, become absolutely null and void.

Effect of
failure to
register
within
three
months.

Provided that the Court may, on sufficient cause shown, revive the order on application made within a further period of one month.

Articles of Association.

17. (1) There may, in the case of a company limited by shares, and there shall, in the case of a company limited by guarantee or unlimited, be registered with the memorandum, articles of association signed by the subscribers to the memorandum and prescribing regulations for the company.

Registration
of articles.

(2) Articles of association may adopt all or any of the regulations contained in Table A in the First Schedule, ¹ and shall in any event be deemed to contain regulations identical with or to the same effect as regulation 56, regulation 66, regulation 71, regulations 78, 79, 80, 81 and 82, regulation 95, regulation 97, regulation 105, regulation 107 and regulations 112, 113, 114, 115 and 116 contained in that Table :

Provided that regulation 78 shall not be deemed to be included in the articles of any private company except a private company which is the subsidiary company of a public company :

¹ Ins. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 8.

(Part II.—Constitution and Incorporation.)

Provided further that regulation 107 shall be deemed to require that a statement of the reasons why of the whole amount of any item of expenditure which may in fairness be distributed over several years, only a portion thereof is charged against the income of the year, shall be shown in the profit and loss account, unless the company in general meeting shall determine otherwise.]

(3) In the case of an unlimited company or a company limited by guarantee, the articles, if the company has a share capital, shall state the amount of share capital with which the company proposes to be registered.

(4) In the case of an unlimited company or a company limited by guarantee, if the company has not a share capital, the articles shall state the number of members with which the company proposes to be registered, for the purpose of enabling the registrar to determine the fees payable on registration.

Application
of Table A.

18. In the case of a company limited by shares and registered after the commencement of this Act, if articles are not registered, or, if articles are registered, in so far as the articles do not exclude or modify the regulations in Table A in the First Schedule, those regulations shall, so far as applicable, be the regulations of the company in the same manner and to the same extent as if they were contained in duly registered articles.

Form and
signature of
articles.

19. Articles shall—

- (a) be printed ;
- (b) be divided into paragraphs numbered consecutively ; and
- (c) be signed by each subscriber of the memorandum ⁴[(who shall add his address and description)] of association in the presence of at least one witness who must attest the signature.

Alteration
of articles
by special
resolution.

20. (1) Subject to the provisions of this Act and to the conditions contained in its memorandum, a company may by special resolution alter or add to its articles ; and any alteration or addition so made shall be as valid as if originally contained in the articles, and be subject in like manner to alteration by special resolution.

(2) The power of altering articles under this section shall, in the case of any company formed and registered under Act No. XIX of 1857 and ²Act No. VII of 1860 or either of them, extend to altering any provisions in Table B³ annexed to Act XIX of 1857, and shall also, in the case of an unlimited company formed and registered under the said Acts or either of them, extend to altering any regulations relating to the amount of capital or its distribution into shares, notwithstanding that those regulations are contained in the memorandum.

Effect of
alteration in
memorandum
or articles.

⁴[20A. Notwithstanding anything in the memorandum or articles of a company, no member of the company shall be bound by an alteration made in the memorandum or articles after the date on which he became a member if

¹ Ins. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 9.

² Rep. by the Indian Companies Act, 1866 (10 of 1866).

³ See Appendix I to this Act, p. 434, *infra*.

⁴ Ins. by s. 10 of Act 22 of 1936.

(Part II.—Constitution and Incorporation.)

and so far as the alteration requires him to take or subscribe for more shares than the number held by him at the date on which the alteration is made, or in any way increases his liability as at that date to contribute to the share capital of, or otherwise to pay money to, the company :

Provided that this section shall not apply in any case where the member agrees in writing either before or after the alteration is made to be bound thereby].

General Provisions.

21. (1) The memorandum and articles shall, when registered, bind the company and the members thereof to the same extent as if they respectively had been signed by each member and contained a covenant on the part of each member, his heirs, and legal representatives, to observe all the provisions of the memorandum and of the articles, subject to the provisions of this Act.

Effect of memorandum and articles.

(2) All money payable by any member to the company under the memorandum or articles shall be a debt due from him to the company.

22. The memorandum and the articles (if any) shall be filed with the registrar for the province in which the registered office of the company is stated by the memorandum to be situate, and he shall retain and register them.

Registration of memorandum and articles.

23. (1) On the registration of the memorandum of a company, the registrar shall certify under his hand that the company is incorporated, and in the case of a limited company that the company is limited.

Effect of registration.

(2) From the date of incorporation mentioned in the certificate of incorporation, the subscribers of the memorandum, together with such other persons as may from time to time become members of the company, shall be a body corporate by the name contained in the memorandum, capable forthwith of exercising all the functions of an incorporated company, and having perpetual succession and a common seal, but with such liability on the part of the members to contribute to the assets of the company in the event of its being wound up as is mentioned in this Act.

24. (1) A certificate of incorporation given by the registrar in respect of any association be conclusive evidence that all the requirements of this Act in respect of registration and of matters precedent and incidental thereto have been complied with, and that the association is a company authorised to be registered and duly registered under this Act.

Conclusiveness of certificate of incorporation.

(2) A declaration by an advocate, attorney or pleader entitled to appear before a High Court who is engaged in the formation of a company, or by a person named in the articles as a director, manager or secretary of the company, of compliance with all or any of the said requirements shall be filed with the registrar, and the registrar may accept such a declaration as sufficient evidence of compliance.

(Part II.—Constitution and Incorporation.)

Copies of memorandum and articles to be given to members.

25. (1) Every company shall send to every member, ¹[at his request and within fourteen days thereof] on payment of one rupee or such less sum as the company may prescribe, a copy of the memorandum and of the articles (if any).

Alteration of memorandum or articles to be noted in every copy.

(2) If a company makes default in complying with the requirements of this section, it shall be liable for each offence to a fine not exceeding ten rupees.

²[25A. (1) Where an alteration is made in the memorandum or articles of a company, every copy of the memorandum or articles issued after the date of the alteration shall be in accordance with the alteration.

(2) If, where any such alteration has been made, the company at any time after the date of the alteration issues any copies of the memorandum or articles which are not in accordance with the alteration, it shall be liable to a fine not exceeding ten rupees for each copy so issued and every officer of the company who is knowingly and wilfully in default shall be liable to the like penalty.]

Associations not for Profit.

Power to dispense with "Limited" in name of charitable and other companies.

26. (1) Where it is proved to the satisfaction of the ³[Central Government] that an association capable of being formed as a limited company has been or is about to be formed for promoting commerce, art, science, ⁴[religion], charity, or any other useful object, and applies or intends to apply its profits (if any) or other income in promoting its objects, and to prohibit the payment of any dividend to its members the ³[Central Government] may, by license under the hand of one of its Secretaries, direct that the association be registered as a company with limited liability, without the addition of the word "Limited" to its name, and the association may be registered accordingly.

(2) A license by the ³[Central Government] under this section may be granted on such conditions and subject to such regulations as the ³[Central Government] thinks fit, and those conditions and regulations shall be binding on the association, and shall, if the ³[Central Government] so directs, be inserted in the memorandum and articles, or in one of those documents.

(3) The association shall on registration enjoy all the privileges of limited companies, and be subject to all their obligations, except those of using the word "Limited" as any part of its name, and of publishing its name, ⁵[and of sending lists of members to the registrar].

(4) A license under this section may at any time be revoked by the ³[Central Government], and upon revocation the registrar shall enter the word "Limited" at the end of the name of the association upon the register, and

¹ Subs. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 11, for " at his request, and ".

² Ins. by s. 12, *ibid.*

³ Subs. by the A. O. for " L. G. "

⁴ Ins. by the Indian Companies (Amendment) Act, 1926 (33 of 1926), s. 2.

⁵ Subs. by Act 22 of 1936, s. 13, for " and of filing lists of members and directors and managers with the registrar ".

(Part II.—Constitution and Incorporation. Part III.—Share Capital, Registration of Unlimited Company as Limited, and Unlimited Liability of Directors.)

the association shall cease to enjoy the exemptions and privileges granted by this section :

Provided that, before a license is so revoked, the ¹[Central Government] shall give to the association notice in writing of its intention, and shall afford the association an opportunity of submitting a representation in opposition to the revocation.

Companies limited by Guarantee.

27. (1) In the case of a company limited by guarantee and not having a share capital, and registered after the commencement of this Act, every provision in the memorandum or articles or in any resolution of the company purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member shall be void. Provision as to companies limited by guarantee.

(2) For the purpose of the provisions of this Act relating to the memorandum of a company limited by guarantee and of this section, every provision in the memorandum or articles, or in any resolution, of any company limited by guarantee and registered after the commencement of this Act, purporting to divide the undertaking of the company into shares or interests, shall be treated as a provision for a share capital, notwithstanding that the nominal amount or number of the shares or interests is not specified thereby.

PART III.

SHARE CAPITAL, REGISTRATION OF UNLIMITED COMPANY AS LIMITED, AND UNLIMITED LIABILITY OF DIRECTORS.

Distribution of Share Capital.

28. (1) The shares or other interest of any member in a company shall be moveable property, transferable in manner provided by the articles of the company. Nature of shares.

(2) Each share in a company having a share capital shall be distinguished by its appropriate number.

29. A certificate, under the common seal of the company, specifying any shares or stock held by any member, shall be *prima facie* evidence of the title of the member to the shares or stock therein specified. Certificate of shares or stock.

30. (1) The subscribers of the memorandum of a company shall be deemed to have agreed to become members of the company, and on its registration shall be entered as members in its register of members. Definition of "member".

(2) Every other person who agrees to become a member of a company, and whose name is entered in its register of members, shall be a member of the company.

¹ Subs. by the A. O. for "L. G."

(Part III.—Share Capital, Registration of Unlimited Company as Limited, and Unlimited Liability of Directors.)

Register of
members.

31. (1) Every company shall keep in one or more books a register of its members, and enter therein the following particulars :—

- (i) the names and addresses, and the occupations, if any, of the members, and, in the case of a company having a share capital, a statement of the shares held by each member, distinguishing each share by its number, and of the amount paid or agreed to be considered as paid on the shares of each member ;
- (ii) the date at which each person was entered in the register as a member ;
- (iii) the date at which any person ceased to be a member.

(2) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding fifty rupees for every day during which the default continues ; and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

Index of
members of
company.

¹[**31A.** (1) Every company having more than fifty members shall, unless the register of members is in such a form as to constitute in itself an index, keep an index of the names of the members of the company and shall within fourteen days after the date on which any alteration is made in the register of members make any necessary alteration in the index.

(2) The index, which may be in the form of a card index, shall in respect of each member contain a sufficient indication to enable the account of that member in the register to be readily found.

(3) If default is made in complying with this section, the company and every officer of the company who is knowingly and wilfully in default shall be liable to a fine not exceeding fifty rupees.]

Annual list
of members
and
summary.

32. (1) Every company having a share capital shall ²[within eighteen months from its incorporation and thereafter] once at least in every year make a list of all persons who, on the day of the first or only ordinary general meeting in the year, are members of the company, and of all persons who have ceased to be members since the date of the last return or (in the case of the first return) of the incorporation of the company.

(2) The list shall state the names, addresses, and occupations of all the past and present members therein mentioned, and the number of shares held by each of the existing members at the date of the return, specifying shares transferred since the date of the last return or (in the case of the first return) of the incorporation of the company by persons who are still members and persons who have ceased to be members respectively and the dates of registration of the transfers, and shall contain a summary distinguishing

¹ Ins. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 14.

² Ins. by s. 15, *ibid.*

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between shares issued for cash and shares issued as fully or partly paid up otherwise than in cash, and specifying the following particulars :—

- (a) the amount of the share capital of the company, and the number of the shares into which it is divided ;
- (b) the number of shares taken from the commencement of the company up to the date of the return ;
- (c) the amount called up on each share ;
- (d) the total amount of calls received ;
- (e) the total amount of calls unpaid ;
- (f) the total amount of the sums (if any) paid by way of commission in respect of any shares or debentures, or allowed by way of discount ¹[in respect of any shares or debentures], since the date of the last return ²[or so much thereof as has not been written off at the date of the return] ;
- (g) the total number of shares forfeited ;
- (h) the total amount of shares or stock for which share-warrants are outstanding at the date of the return ;
- (i) the total amount of share-warrants issued and surrendered respectively since the date of the last return ;
- (k) the number of shares or amount of stock comprised in each share-warrant ;
- (l) the names and addresses of the persons who at the date of the return are the directors of the company and of the persons (if any) who at the said date are ³[the managers or managing agents of the company, and the changes in the personnel of the directors, managers and managing agents since the last return together with the dates on which they took place] ; and
- (m) the total amount of debt due from the company in respect of all mortgages and charges which are required to be registered with the registrar under this Act.

(3) The above list and summary shall be contained in a separate part of the register of members, and shall be completed within ⁴[twenty-one days] after the day of the first or only ordinary general meeting in the year, and the company shall forthwith file with the registrar a copy signed by a director or by the manager or the secretary of the company, together with a certificate from such director, manager or secretary that the list and summary state the facts as they stood on the day aforesaid.

¹ Subs. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 15, for " in respect of any debentures".

² Ins. by s. 15, *ibid.*

³ Subs. by s. 15, *ibid.*, for " the managers of the company".

⁴ Subs. by s. 15, *ibid.*, for " seven days".

(Part III.—Share Capital, Registration of Unlimited Company as Limited, and Unlimited Liability of Directors.)

¹[(4) A private company shall send with the annual return required by sub-section (1) a certificate signed by a director or other officer of the company that the company has not, since the date of the last return or, in the case of a first return, since the date of the incorporation of the company, issued any invitation to the public to subscribe for any shares or debentures of the company, and where the annual return discloses the fact that the number of members of the company exceeds fifty, also a certificate so signed that the excess consists wholly of persons who under sub-clause (b) of clause 13 of sub-section (1) of section 2 are not to be included in reckoning the number of fifty.]

²[(5)] If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding fifty rupees for every day during which the default continues, and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

33. No notice of any trust, expressed, implied or constructive, shall be entered on the register, or be receivable by the registrar.

Trusts not
to be
entered on
register.

Transfer of
shares.

³[**34.** (1) An application for the registration of the transfer of shares in a company may be made either by the transferor or the transferee, provided that where such application is made by the transferor no registration shall in the case of partly paid shares be affected unless the company gives notice of the application to the transferee and subject to the provisions of sub-section (4) the company shall, unless objection is made by the transferee within two weeks from the date of receipt of the notice, enter in its register of members the name of the transferee in the same manner and subject to the same conditions as if the application for registration was made by the transferee.

(2) For the purposes of sub-section (1) notice to the transferee shall be deemed to have been duly given if despatched by prepaid post to the transferee at the address given in the instrument of transfer and shall be deemed to have been delivered in the ordinary course of post.

(3) It shall not be lawful for the company to register a transfer of shares in or debentures of the company unless the proper instrument of transfer duly stamped and executed by the transferor and the transferee has been delivered to the company along with the scrip :

Provided that, where it is proved to the satisfaction of the directors of the company that an instrument of transfer signed by the transferor and transferee has been lost, the company may, if the directors think fit, on an application in writing made by the transferee and bearing the stamp required by an instrument of transfer, register the transfer on such terms as to indemnity as the directors may think fit.

¹ Ins. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 15.

² The original sub-section (4) was re-numbered as sub-section (5) by s. 15, *ibid.*

³ Subs. by s. 16, *ibid.*, for the original section.

(Part III.—Share Capital, Registration of Unlimited Company as Limited, and Unlimited Liability of Directors.)

(4) If a company refuses to register the transfer of any shares or debentures, the company shall, within two months from the date on which the instrument of transfer was lodged with the company, send to the transferee and the transferor notice of the refusal.

(5) If default is made in complying with sub-section (4) of this section, the company and every director, manager, secretary or other officer of the company who is knowingly a party to the default shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.

(6) Nothing in sub-section (3) shall prejudice any power of the company to register as shareholder or debenture holder any person to whom the right to any shares in or debentures of the company has been transmitted by operation of law.

(7) Nothing in this section shall prejudice any power of the company under its articles to refuse to register the transfer of any shares.]

35. A transfer of the share or other interest of a deceased member of a company made by his legal representative shall, although the legal representative is not himself a member, be as valid as if he had been a member at the time of the execution of the instrument of transfer.

Transfer by
legal re-
presentative.

36. (1) The register of members, commencing from the date of the registration of the company ¹[and the index of members] shall be kept at the registered office of the company, and, except when closed under the provisions of this Act, shall during business hours (subject to such reasonable restrictions, as the company in general meeting may impose, so that not less than two hours in each day be allowed for inspection) be open to the inspection of any member gratis, and to the inspection of any other person on payment of one rupee, or such less sum as the company may prescribe, for each inspection. ¹[Any such member or other person may make extracts therefrom.]

Inspection of
register of
members.

(2) Any member or other person may require a copy of the register, or of any part thereof, or of the list and summary required by this Act, or any part thereof, on payment of six annas for every hundred words or fractional part thereof required to be copied ¹[and the company shall cause any copy so required by any person to be sent to that person within a period of ten days, exclusive of non-working days and days on which the transfer books of the company are closed, commencing on the day next after the day on which the requirement is received by the company].

²[(3) If any inspection required under this section is refused or if any copy required under this section is not sent within the proper period the company and every officer of the company who is in default shall be liable in respect of each offence to a fine not exceeding twenty rupees and to a further fine not exceeding twenty rupees for every day during which the refusal or default

¹ Ins. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 17.

² Subs. by s. 17, *ibid.*, for the original sub-section.

(Part III.—Share Capital, Registration of Unlimited Company as Limited, and Unlimited Liability of Directors.)

continues and the Court may by an order compel an immediate inspection of the register and index or direct that copies required shall be sent to the persons requiring them.]

Power to
close register.

37. A company may, on giving ¹[seven days' previous] notice by advertisement in some newspaper circulating in the district in which the registered office of the company is situate, close the register of members for any time or times not exceeding in the whole ²[forty-five] days in each year ¹[but not exceeding thirty days at a time].

Power of
Court to
rectify re-
gister.

38. (1) If—

(a) the name of any person is fraudulently or without sufficient cause entered in or omitted from the register of members of a company ; or

(b) default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member,

the person aggrieved, or any member of the company, or the company, may apply to the Court for rectification of the register.

(2) The Court may either refuse the application, or may order rectification of the register and payment by the company of any damages sustained by any party aggrieved, and may make such order as to costs as it in its discretion thinks fit.

(3) On any application under this section the Court may decide any question relating to the title of any person who is a party to the application to have his name entered in or omitted from the register, whether the question arises between members or alleged members, or between members or alleged members on the one hand and the company on the other hand ; and generally may decide any question necessary or expedient to be decided for rectification of the register :

Provided that the Court may direct an issue to be tried in which any question of law may be raised ; and an appeal from the decision on such an issue shall lie in the manner directed by the Code of Civil Procedure, 1908, on the grounds V of 1908, mentioned in section 100 of that Code.

Notice to
registrar of
rectification
of register.

39. In the case of a company required by this Act to file a list of its members with the registrar, the Court, when making an order for rectification of the register, shall, by its order, direct notice of the rectification to be filed with the registrar ³[within a fortnight from the date of the completion of the order].

Register to
be evidence.

40. The register of members shall be *prima facie* evidence of any matters by this Act directed or authorised to be inserted therein.

Power for
company to
keep branch
register in
the United
Kingdom.

41. (1) A company having a share capital may, if so authorised by its articles, cause to be kept in the United Kingdom a branch register of members (in this Act called a British register).

¹ Ins. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 18.

² Subs. by s. 19, *ibid.*, for " thirty ".

³ Ins. by *ibid.*, s. 19.

(Part III.—Share Capital, Registration of Unlimited Company as Limited, and Unlimited Liability of Directors.)

(2) The company shall, within one month from the date of the opening of any British register, file with the registrar notice of the situation of the office where such register is kept and, in the event of any change in the situation of such office or of its discontinuance, shall within one month from the date of such change or discontinuance, as the case may be, file notice of such change or discontinuance.

(3) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.

42. (1) A British register shall be deemed to be part of the company's register of members (in this section called the principal register). Regulations as to British register.

(2) It shall be kept in the same manner in which the principal register is by this Act required to be kept, except that the advertisement before closing the register shall be inserted in some newspaper circulating in the locality wherein the British register is kept.

(3) The company shall transmit to its registered office in India a copy of every entry in its British register as soon as may be after the entry is made; and shall cause to be kept at such office, duly entered up from time to time, a duplicate of its British register, and the duplicate shall, for all the purposes of this Act, be deemed to be part of the principal register.

(4) Subject to the provisions of this section with respect to the duplicate register, the shares registered in a British register shall be distinguished from the shares registered in the principal register, and no transaction with respect to any shares registered in a British register shall, during the continuance of that registration, be registered in any other register.

(5) The company may discontinue to keep any British register, and thereupon all entries in that register shall be transferred to the principal register.

(6) Subject to the provisions of this Act, any company may, by its articles, make such regulations as it may think fit respecting the keeping of a British register.

¹[42A. (1) The provisions of sections 41 and 42 shall apply in relation to Burma as they apply in relation to the United Kingdom. Application of sections 41 & 42 to

(2) In the application of the said provisions to Burma, references to a British register shall be construed as references to a Burma register.] Burma.

43. ²[(1)] A company limited by shares, if so authorised by its articles, may, with respect to any fully paid-up shares, or to stock, issue under its common seal a warrant stating that the bearer of the warrant is entitled to the shares or stock therein specified, and may provide by coupons or otherwise, for the payment of the future dividends on the shares or stock included in the warrant, in this Act termed a share-warrant. Issue of share-warrants to bearer.

¹ Ins. by the A. O.

² The original s. 43 was re-numbered as sub-section (1) of that section by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 20.

(Part III.—Share Capital, Registration of Unlimited Company as Limited, and Unlimited Liability of Directors.)

¹[(2) Nothing in this section shall apply to a private company.]

Effect of
share-
warrant.

44. A share-warrant shall entitle the bearer thereof to the shares or stock therein specified, and the shares or stock may be transferred by delivery of the warrant.

Registration
of name of
bearer of
share-
warrant.

45. The bearer of a share-warrant shall, subject to the articles of the company, be entitled, on surrendering it for cancellation, to have his name entered as a member in the register of members; and the company shall be responsible for any loss incurred by any person by reason of the company entering in its register the name of a bearer of a share-warrant in respect of the shares or stock therein specified without the warrant being surrendered and cancelled.

Position of
bearer of
share-
warrant.

46. The bearer of a share-warrant may, if the articles of the company so provide, be deemed to be a member of the company within the meaning of this Act, either to the full extent or for any purposes defined in the articles, except that he shall not be qualified in respect of the shares or stock specified in the warrant for being a director or manager of the company, in cases where such a qualification is required by the articles.

Entries in
register
when share-
warrant
issued.

47. (1) On the issue of a share-warrant, the company shall strike out of its register of members the name of the member then entered therein as holding the shares or stock specified in the warrant as if he had ceased to be a member, and shall enter in the register the following particulars, namely :—

- (i) the fact of the issue of the warrant;
- (ii) a statement of the shares or stock included in the warrant, distinguishing each share by its number; and
- (iii) the date of the issue of the warrant.

(2) If a company makes default in complying with the requirements of this section it shall be liable to a fine not exceeding fifty rupees for every day during which the default continues, and every officer of the company who knowingly and wilfully continues or permits the default shall be liable to the like penalty.

Surrender of
share-
warrant.

48. Until the warrant is surrendered, the above particulars shall be deemed to be the particulars required by this Act to be entered in the register of members; and, on the surrender, the date of the surrender shall be entered as if it were the date at which a person ceased to be a member.

Power of
company to
arrange for
different
amounts
being paid
on shares.

49. A company, if so authorised by its articles, may do any one or more of the following things, namely :—

- (1) make arrangements on the issue of shares for a difference between the shareholders in the amounts and times of payment of calls on their shares;

¹ Ins. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 20.

(Part III.—Share Capital, Registration of Unlimited Company as Limited, and Unlimited Liability of Directors.)

- (2) accept from any member who assents thereto the whole or a part of the amount remaining unpaid on any shares held by him although no part of that amount has been called up ;
- (3) pay dividend in proportion to the amount paid up on each share where a larger amount is paid up on some shares than on others.

50. (1) A company limited by shares, if so authorised by its articles, may alter the conditions of its memorandum as follows (that is to say), it may—

Power of company limited by shares to alter its share capital.

- (a) increase its share capital by the issue of new shares of such amount as it thinks expedient ;
- (b) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares ;
- (c) convert all or any of its paid-up shares into stock and re-convert that stock into paid-up shares of any denomination ;
- (d) sub-divide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so however, that in the sub-division the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived ;
- (e) cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.

(2) The powers conferred by this section ¹ * * * * must be exercised ²[by the company in general meeting].

³[(3)] A cancellation of shares in pursuance of this section shall not be deemed to be a reduction of share capital within the meaning of this Act.

³[(4)] The company shall file with the registrar notice of the exercise of any power referred to in clause (d) or clause (e) of sub-section (1) within fifteen days from the exercise thereof.]

51. (1) Where a company having a share capital has consolidated and divided its share capital into shares of larger amount than its existing shares or converted any of its shares into stock, or re-converted stock into shares, it shall within fifteen days of the consolidation and division, conversion or re-conversion, file notice with the registrar of the same, specifying the share consolidated and divided, or converted, or the stock re-converted.

Notice to registrar of consolidation of share capital conversion of shares into stock, etc.

(2) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding fifty rupees for every day

¹ The words " with respect to sub-division of shares " rep. by the Indian Companies (Amendment) Act 1936 (22 of 1936), s. 21.

² Subs. by s. 21, *ibid.* for " by special resolution ".

³ Original sub-sections (3) and (4) were omitted, sub-section (5) was re-numbered (3) and sub-section (4) was added, by s. 21, *ibid.*

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during which the default continues, and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

Effect of conversion of shares into stock.

52. Where a company having a share capital has converted any of its shares into stock, and filed notice of the conversion with the registrar, all the provisions of this Act which are applicable to shares only shall cease as to so much of the share capital as is converted into stock ; and the register of members of the company, and the list of members to be filed with the registrar, shall show the amount of stock held by each member instead of the amount of shares and the particulars relating to shares hereinbefore required by this Act.

Notice of increase of share capital or of members.

53. (1) Where a company having a share capital, whether its shares have or have not been converted into stock, has increased its share capital beyond the registered capital, and where a company not having a share capital has increased the number of its members beyond the registered number, it shall file with the registrar, in the case of an increase of share capital, within fifteen days after the passing ¹ * * * * of the resolution authorising the increase, and in the case of an increase of members within fifteen days after the increase was resolved on or took place, notice of the increase of capital or members, and the registrar shall record the increase.

²[(2) The notice to be given as aforesaid shall include particulars of the classes of shares affected and the conditions (if any) subject to which the new shares are to be issued.]

²[(3)] If a company makes a default in complying with the requirements of this section, it shall be liable to a fine not exceeding fifty rupees for every day during which the default continues, and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

Re-organization of share capital.

54. (1) A company limited by shares may, by special resolution confirmed by an order of the Court, modify the conditions contained in its memorandum so as to reorganize its share capital, whether by the consolidation of shares of different classes or by the division of its shares into shares of different classes :

Provided that no preference or special privilege attached to or belonging to any class of shares shall be interfered with except by resolution passed by a majority in number of shareholders of that class holding three-fourths of the share capital of that class ³ * * * * and every resolution so passed shall bind all shareholders of the class.

¹ The words " or in the case of a special resolution the confirmation " rep. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 22.

² Sub-section (2) was ins., and the original sub-section (2) re-numbered (3), by s. 22, *ibid.*

³ The words " and confirmed at a meeting of shareholders of that class in the same manner as a special resolution of the company is required to be confirmed " rep. by s. 23, *ibid.*

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(2) Where an order is made under this section, a certified copy thereof shall be filed with the registrar within twenty-one days after the making of the order, or within such further time as the Court may allow, and the resolution shall not take effect until such a copy has been so filed.

Reduction of Share Capital.

¹[54A. (1) No company limited by shares shall have power to buy its own shares or the shares of a public company of which it is a subsidiary company unless the consequent reduction of capital is effected and sanctioned in the manner provided by sections 55 to 66.

Restrictions on purchase by company or loans by company for purchase of its own shares.

(2) No company limited by shares other than a private company, not being a subsidiary company of a public company, shall give, whether directly or indirectly, and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of or in connection with a purchase made or to be made by any person of any shares in the company :

Provided that nothing in this section shall be taken to prohibit, where the lending of money is part of the ordinary business of a company, the lending of money by the company in the ordinary course of its business.

(3) If a company acts in contravention of this section, the company and every officer of the company who is knowingly and wilfully in default shall be liable to a fine not exceeding one thousand rupees.

(4) Nothing in this section shall affect the right of a company to redeem any shares issued under section 105B.]

55. ²[(1)] Subject to confirmation by the Court, a company limited by shares, if so authorised by its articles, may by special resolution reduce its share capital in any way, and in particular (without prejudice to the generality of the foregoing power) may—

Reduction of share capital.

(a) extinguish or reduce the liability on any of its shares in respect of share capital not paid up ; or

(b) either with or without extinguishing or reducing liability on any of its shares, cancel any paid-up share capital which is lost or unrepresented by available assets ; or

(c) either with or without extinguishing or reducing liability on any of its shares, pay off any paid-up share capital which is in excess of the wants of the company,

and may, if and so far as is necessary, alter its memorandum by reducing the amount of its share capital and of its shares accordingly.

¹ Ins. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 24.

² Original sub-section (1) of s. 55 was omitted and sub-sections (2) and (3) were re-numbered as (1) and (2) respectively, by s. 25, *ibid.*

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¹[(2)] A special resolution under this section is in this Act called a resolution for reducing share capital.

Application to Court for confirming order.

56. Where a company has passed ²* * a resolution for reducing share capital, it may apply by petition to the Court for an order confirming the reduction.

Addition to name of company of "and reduced".

57. On and from the ³[passing] by a company of a resolution for reducing share capital, or where the reduction does not involve either the diminution of any liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, then on and from ⁴[the making of the order confirming the reduction], the company shall add to its name, until such date as the Court may fix, the words "and reduced" as the last words in its name, and those words shall, until that date, be deemed to be part of the name of the company :

Provided that, where the reduction does not involve either the diminution of any liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, the Court may, if it thinks expedient, dispense altogether with the addition of the words "and reduced".

Objections by creditors and settlement of list of objecting creditors.

58. (1) Where the proposed reduction of share capital involves either diminution of liability in respect of unpaid share capital, or the payment to any shareholder of any paid-up share capital, and in any other case if the Court so directs, every creditor of the company who at the date fixed by the Court is entitled to any debt or claim which, if that date were the commencement of the winding up of the company, would be admissible in proof against the company, shall be entitled to object to the reduction.

(2) The Court shall settle a list of creditors so entitled to object, and for that purpose shall ascertain, as far as possible without requiring an application from any creditor, the names of those creditors and the nature and amount of their debts or claims, and may publish notices fixing a day or days within which creditors not entered on the list are to claim to be so entered or are to be excluded from the right of objecting to the reduction.

Power to dispense with consent of creditor on security being given for his debt.

59. Where a creditor entered on the list of creditors whose debt or claim is not discharged or determined does not consent to the reduction, the Court may, if it thinks fit, dispense with the consent of that creditor, on the company securing payment of his debt or claim by appropriating, as the Court may direct, the following amount (that is to say),—

(i) if the company admits the full amount of his debt or claim, or, though not admitting it, is willing to provide for it, then the full amount of the debt or claim ;

¹ See footnote 2 on *pre-page*.

² The words "and confirmed" rep. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 26.

³ Subs. by s. 27, *ibid.*, for "confirmation".

⁴ Subs. by s. 27, *ibid.*, for "the presentation of the petition for confirming the reduction".

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- (ii) if the company does not admit or is not willing to provide for the full amount of the debt or claim, or if the amount is contingent or not ascertained, then an amount fixed by the Court after the like inquiry and adjudication as if the company were being wound up by the Court.

60. The Court, if satisfied, with respect to every creditor of the company who under this Act is entitled to object to the reduction, that either his consent to the reduction has been obtained or his debt or claim has been discharged or has been determined or has been secured, may make an order confirming the reduction on such terms and conditions as it thinks fit. Order confirming reduction.

61. (1) The registrar on production to him of an order of the Court confirming the reduction of the share capital of a company, and on the filing with him of a certified copy of the order and of a minute (approved by the Court) showing, with respect to the share capital of the company as altered by the order, the amount of the share capital, the number of shares into which it is to be divided and the amount of each share, and the amount (if any) at the date of the registration deemed to be paid up on each share, shall register the order and minute. Registration of order and minute of reduction.

(2) On the registration, and not before, the resolution for reducing share capital as confirmed by the order so registered shall take effect.

(3) Notice of the registration shall be published in such manner as the Court may direct.

(4) The registrar shall certify under his hand the registration of the order and minute, and his certificate shall be conclusive evidence that all the requirements of this Act with respect to reduction of share capital have been complied with, and that the share capital of the company is such as is stated in the minute.

62. (1) The minute when registered shall be deemed to be substituted for the corresponding part of the memorandum of the company, and shall be valid and alterable as if it had been originally contained therein, and shall be embodied in every copy of the memorandum issued after its registration. Minute to form part of memorandum.

(2) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding ten rupees for each copy in respect of which default is made, and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

63. (1) A member of the company, past or present, shall not be liable in respect of any share to any call or contribution exceeding in amount the difference (if any) between the amount paid, or (as the case may be) the reduced amount, if any, which is to be deemed to have been paid, on the share and the amount of the share as fixed by the minute : Liability of members in respect of reduced shares.

Provided that, if any creditor, entitled in respect of any debt or claim to object to the reduction of share capital, is, by reason of his ignorance of the

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proceedings for reduction, or of their nature and effect with respect to his claim not entered on the list of creditors, and, after the reduction, the company is unable, within the meaning of the provisions of this Act with respect to winding up by the Court, to pay the amount of his debt or claim, then—

(i) every person who was a member of the company at the date of the registration of the order for reduction and minute, shall be liable to contribute for the payment of that debt, or claim an amount not exceeding the amount which he would have been liable to contribute if the company had commenced to be wound up on the day before that registration; and

(ii) if the company is wound up, the Court, on the application of any such creditor and proof of his ignorance as aforesaid, may, if it thinks fit, settle accordingly a list of persons so liable to contribute, and make and enforce calls and orders on the contributories settled on the list as if they were ordinary contributories in a winding up.

(2) Nothing in this section shall affect the rights of the contributories among themselves.

Penalty on concealment of name of creditor.

64. If any officer of the company wilfully conceals the name of any creditor entitled to object to the reduction, or wilfully misrepresents the nature or amount of the debt or claim of any creditor, or if any officer of the company abets any such concealment or misrepresentation as aforesaid, every such officer shall be punishable with imprisonment which may extend to one year, or with fine, or with both.

Publication of reasons for reduction.

65. In any case of reduction of share capital, the Court may require the company to publish as the Court directs the reasons for reduction, or such other information in regard thereto as the Court may think expedient with a view to give proper information to the public, and, if the Court thinks fit, the causes which led to the reduction.

Increase and reduction of share capital in case of a company limited by guarantee having a share capital.

66. A company limited by guarantee and registered after the commencement of this Act may, if it has a share capital and is so authorised by its articles, increase or reduce its share capital in the same manner and subject to the same conditions in and subject to which a company limited by shares may increase or reduce its share capital under the provisions of this Act.

¹ [Variation of Shareholders' Rights.]

Rights of holders of special classes of shares.

¹ [66A. (1) If in the case of a company, the share capital of which is divided into different classes of shares, provision is made by the memorandum

¹ This heading and s. 66A. were ins. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 28.

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or articles for authorising the variation of the rights attached to any class of shares in the company, subject to the consent of any specified proportion of the holders of the issued shares of that class or the sanction of a resolution passed at a separate meeting of the holders of those shares, and in pursuance of the said provision the rights attached to any such class of shares are at any time varied, the holders of not less in the aggregate than ten per cent. of the issued shares of that class, being persons who did not consent to or vote in favour of the resolution for the variation, may apply to the Court to have the variation cancelled, and where any such application is made the variation shall not have effect unless and until it is confirmed by the Court.

(2) An application under this section must be made within fourteen days after the date on which the consent was given or the resolution was passed, as the case may be, and may be made on behalf of the shareholders entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

(3) On any such application the Court, after hearing the applicant and any other persons who apply to the Court to be heard and appear to the Court to be interested in the application, may, if it is satisfied having regard to all the circumstances of the case that the variation would unfairly prejudice the shareholders of the class represented by the applicant, disallow the variation and shall, if not so satisfied, confirm the variation.

(4) The decision of the Court on any such application shall be final.

(5) The company shall within fifteen days after the service on the company of any order made on any such application forward a copy of the order to the registrar and, if default is made in complying with this provision, the company and every officer of the company who is knowingly and wilfully in default shall be liable to a fine not exceeding fifty rupees.

(6) The expression "variation" in this section includes "abrogation" and the expression "varied" shall be construed accordingly.]

Registration of Unlimited Company as Limited.

67. (1) Subject to the provisions of this section, any company registered as unlimited may register under this Act as limited or any company already registered as a limited company may re-register under this Act, but the registration of an unlimited company as a limited company shall not affect any debts, liabilities, obligations or contracts incurred or entered into by, to, with or on behalf of, the company before the registration, and those debts, liabilities, obligations and contracts may be enforced in manner provided by Part VIII of this Act in the case of a company registered in pursuance of that Part.

Registration of unlimited company as limited.

(2) On registration in pursuance of this section, the registrar shall close the former registration of the company, and may dispense with the delivery to him of copies of any documents with copies of which he was furnished on

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the occasion of the original registration of the company ; but, save as aforesaid, the registration shall take place in the same manner and shall have effect as if it were the first registration of the company under this Act.

Power of unlimited company to provide for reserve share capital on re-registration.

68. An unlimited company having a share capital may, by its resolution for registration as a limited company in pursuance of this Act, do either or both of the following things, namely :—

- (a) increase the nominal amount of its share capital by increasing the nominal amount of each of its shares, but subject to the condition that no part of the amount by which its capital is so increased shall be capable of being called up except in the event and for the purposes of the company being wound up ;
- (b) provide that a specified portion of its uncalled share capital shall not be capable of being called up except in the event and for the purposes of the company being wound up.

Reserve Liability of Limited Company.

Reserve liability of limited company.

69. A limited company may by special resolution determine that any portion of its share capital which has not been already called up shall not be capable of being called up, except in the event and for the purposes of the company being wound up, and thereupon that portion of its share capital shall not be capable of being called up except in the event and for the purposes aforesaid.

Unlimited Liability of Directors.

Limited company may have directors with unlimited liability.

70. (1) In a limited company the liability of the directors or of any director may, if so provided by the memorandum, be unlimited.

(2) In a limited company in which the liability of any director is unlimited, the directors of the company (if any) and the member who proposes a person for election or appointment to the office of director shall add to that proposal a statement that the liability of the person holding that office will be unlimited and the promoters and officers of the company, or one of them, shall, before the person accepts the office or acts therein, give him notice in writing that his liability will be unlimited.

(3) If any director or proposer makes default in adding such a statement, or if any promoter or officer of the company makes default in giving such a notice, he shall be liable to a fine not exceeding one thousand rupees and shall also be liable for any damage which the person so elected or appointed may sustain from the default, but the liability of the person elected or appointed shall not be affected by the default.

(Part III.—Share Capital, Registration of Unlimited Company as Limited, and Unlimited Liability of Directors. Part IV.—Management and Administration.)

71. (1) A limited company, if so authorised by its articles, may, by special resolution, alter its memorandum so as to render unlimited the liability of its directors or of any director.

(2) Upon the ¹[passing] of any such special resolution, the provisions thereof shall be as valid as if they had been originally contained in the memorandum. ²* * * *

Special resolution of limited company making liability of directors unlimited.

PART IV.

MANAGEMENT AND ADMINISTRATION.

Office and Name.

³[72. (1) A company shall as from the day on which it begins to carry on business, or as from the twenty-eighth day after the date of its incorporation, whichever is the earlier, have a registered office to which all communications and notices may be addressed.

Registered office of company.

(2) Notice of the situation of the registered office and of any change therein shall be given within twenty-eight days after the date of the incorporation of the company or of the change, as the case may be, to the registrar who shall record the same.

(3) The inclusion in the annual return of a company of the statement as to the address of its registered office shall not be taken to satisfy the obligation imposed by this section.

(4) If a company carries on business without complying with the requirements of this section, it shall be liable to a fine not exceeding fifty rupees for every day during which it so carries on business.]

73. Every limited company—

(a) shall paint or affix, and keep painted or affixed, its name on the outside of every office or place in which its business is carried on, in a conspicuous position, in letters easily legible and in English characters, and also, if the registered office be situate in a place beyond the local limits of the ordinary original civil jurisdiction of a High Court, in the characters of one of the vernacular languages used in that place;

Publication of name by a limited company.

¹ Subs. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 29, for "confirmation".

² Certain words in sub-section (2) and sub-section (3) of s. 71 rep. by s. 29, *ibid.*

³ Subs. by s. 30, *ibid.*, for the original section.

(Part IV.—Management and Administration.)

- (b) shall have its name engraven in legible characters on its seal ;
- (c) shall have its name mentioned in legible English characters in all bill-heads and letter paper and in all notices, advertisements and other official publications of the company, and in all bills of exchange, hundis, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed by or on behalf of the company, and in all bills of parcels ; invoices, receipts and letters of credit of the company.

Penalties for
non-publica-
tion of name.

74. (1) If a limited company does not paint or affix, and keep painted or affixed, its name in manner directed by this Act, it shall be liable to a fine not exceeding fifty rupees for not so painting or affixing its name, and for every day during which its name is not so kept painted or affixed, and every officer of the company, who knowingly and wilfully authorises or permits the default, shall be liable to the like penalty.

(2) If any officer of a limited company, or any person on its behalf, uses or authorises the use of any seal purporting to be a seal of the company whereon its name is not so engraven as aforesaid, or issues or authorises the issue of any bill-head, letter paper, notice, advertisement or other official publication of the company, or signs or authorises to be signed on behalf of the company any bill of exchange, hundi, promissory note, endorsement, cheque or order for money or goods, or issues or authorises to be issued any bill of parcels, invoice, receipt or letter of credit of the company, wherein its name is not mentioned in manner aforesaid, he shall be liable to a fine not exceeding five hundred rupees, and shall further be personally liable to the holder of any such bill of exchange, hundi, promissory note, cheque or order for money or goods, for the amount thereof, unless the same is duly paid by the company.

Publication
of authorised
as well as
subscribed
and paid-up
capital.

75. (1) Where any notice, advertisement or other official publication of a company contains a statement of the amount of the authorised capital of the company, such notice, advertisement or other official publication shall also contain a statement in an equally prominent position and in equally conspicuous characters of the amount of the capital which has been subscribed and the amount paid-up.

(2) Any company which makes default in complying with the requirements of this section and every officer of the company who is knowingly a party to the default shall be liable to a fine not exceeding one thousand rupees.

Meetings and Proceedings.

Annual
general
meeting.

¹[76. (1) A general meeting of every company shall be held within eighteen months from the date of its incorporation and thereafter once at least in every calendar year and not more than fifteen months after the holding of the last preceding general meeting.

¹ Subs. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 31, for the original section.

(Part IV.—Management and Administration.)

(2) If default is made in holding a meeting in accordance with the provisions of this section, the company and every director or manager of the company who is knowingly and wilfully a party to the default shall be liable to a fine not exceeding five hundred rupees.

(3) If default is made as aforesaid, the Court may, on the application of any member of the company, call or direct the calling of a general meeting of the company.]

¹[77. (1) Every company limited by shares and every company limited by guarantee and having a share capital shall, within a period of not less than one month nor more than six months, from the date at which the company is entitled to commence business, hold a general meeting of the members of the company, which shall be called the statutory meeting. Statutory meeting of company.

(2) The directors shall, at least twenty-one days before the day on which the meeting is held, forward a report (in this Act referred to as the statutory report) certified as required by this section to every member of the company.

(3) The statutory report shall be certified by not less than two directors of the company or by the chairman of the directors if authorised in this behalf by the directors and shall state—

- (a) the total number of shares allotted, distinguishing shares allotted as fully or partly paid up otherwise than in cash, and stating in the case of shares partly paid up the extent to which they are so paid up, and in either case the consideration for which they have been allotted ;
- (b) the total amount of cash received by the company in respect of all the shares allotted, distinguished as aforesaid ;
- (c) an abstract of the receipts of the company and of the payments made thereout up to a date within seven days of the date of the report, exhibiting under distinctive headings the receipts of the company from shares and debentures and other sources, the payments made thereout, and particulars concerning the balance remaining in hand, and an account or estimate of the preliminary expenses of the company showing separately any commission or discount paid on the issue or sale of shares ;
- (d) the names, addresses and descriptions of the directors, auditors, managing agents and managers, if any, and secretary of the company and the changes, if any, which have occurred since the date of the incorporation ;
- (e) the particulars of any contract, the modification of which is to be submitted to the meeting for its approval, together with the particulars of the modification or proposed modification ;
- (f) the extent to which underwriting contracts, if any, have been carried out ;

¹ Subs. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 32, for the original section.

(Part IV.—Management and Administration.)

- (g) the arrears, if any, due on calls from directors, managing agents and managers ; and
- (h) the particulars of any commission or brokerage paid or to be paid in connection with the issue or sale of shares to any director, managing agent or manager or a partner of the managing agent if the managing agent is a firm or if the managing agent is a private company a director thereof.

(4) The statutory report shall, so far as it relates to the shares allotted by the company, and to the cash received in respect of such shares and to the receipts and payments of the company, be certified as correct by the auditors of the company.

(5) The directors shall cause a copy of the statutory report certified as required by this section to be delivered to the registrar for registration forthwith after the sending thereof to the members of the company.

(6) The directors shall cause a list showing the names, descriptions and addresses of the members of the company, and the number of shares held by them respectively, to be produced at the commencement of the meeting, and to remain open and accessible to any member of the company during the continuance of the meeting.

(7) The members of the company present at the meeting shall be at liberty to discuss any matter relating to the formation of the company or arising out of the statutory report, whether previous notice has been given or not, but no resolution of which notice has not been given in accordance with the articles may be passed.

(8) The meeting may adjourn from time to time, and at any adjourned meeting any resolution of which notice has been given in accordance with the articles, either before or subsequently to the former meeting, may be passed, and the adjourned meeting shall have the same powers as an original meeting.

(9) If a petition is presented to the Court in manner provided by Part V for winding up the company on the ground of default in filing the statutory report or in holding the statutory meeting, the Court may, instead of directing that the company be wound up, give directions for the statutory report to be filed or a meeting to be held, or make such other order as may be just.

(10) In the event of any default in complying with the provisions of this section every director of the company who is guilty of or who knowingly and wilfully authorises or permits the default shall be liable to a fine not exceeding five hundred rupees.

(11) This section shall not apply to a private company.]

Calling of
extraordinary
general
meeting on
requisition.

78. (1) Notwithstanding anything in the articles, the directors of a company which has a share capital shall, on the requisition of the holders of not less than one-tenth of the issued share capital of the company upon which all calls or other sums then due have been paid, forthwith proceed to call an extraordinary general meeting of the company.

(Part IV.—Management and Administration.)

(2) The requisition must state the objects of the meeting, and must be signed by the requisitionists and deposited at the registered office of the company, and may consist of several documents in like form, each signed by one or more requisitionists.

(3) If the directors do not proceed within twenty-one days from the date of the requisition being so deposited to cause a meeting to be called, the requisitionists, or a majority of them in value, may themselves call the meeting, but in either case any meeting so called shall be held within three months from the date of the deposit of the requisition.

¹[(4)] Any meeting called under this section by the requisitionists shall be called in the same manner, as nearly as possible, as that in which meetings are to be called by directors.

¹[(5)] Any reasonable expenses incurred by the requisitionists by reason of the failure of the directors duly to convene a meeting shall be repaid to the requisitionists by the company, and any sum so repaid shall be retained by the company out of any sums due or to become due from the company by way of fees or other remuneration for their services to such of the directors as were in default.]

²[79. (1) The following provisions shall have effect with respect to meetings of a company other than a private company not being a subsidiary of a public company and the procedure thereat, notwithstanding any provision made in the articles of the company in this behalf :—

Provisions as to meetings and votes.

(a) a meeting of a company other than a meeting for the passing of a special resolution may be called by not less than fourteen days' notice in writing ; but with the consent of all the members entitled to receive notice of some particular meeting that meeting may be convened by such shorter notice and in such manner as those members may think fit ;

(b) notice of the meeting of a company with a statement of the business to be transacted at the meeting shall be served on every member in the manner in which notices are required to be served by Table A and for the purpose of this clause the expression ' Table A ' means that table as for the time being in force ; but the accidental omission to give notice to, or the non-receipt of notice by, any member shall not invalidate the proceedings at any meeting ;

(c) five members present in person or by proxy, or the chairman of the meeting, or any member or members holding not less than one-tenth of the issued capital which carries voting rights shall be entitled to demand a poll : Provided that in the case of a private

¹ Sub-section (4) was omitted, original sub-section (5) was renumbered as (4) and sub-section (5) added by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 33.

² Subs. by s. 34, *ibid.*, for the original section.

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company if not more than seven members are personally present, one member, and if more than seven members are personally present, two members shall be entitled to demand a poll ;

- (d) an instrument appointing a proxy, if in the form set out in regulation 67 of Table A, shall not be questioned on the ground that it fails to comply with any special requirements specified for such instruments by the articles ; and
- (e) any shareholder whose name is entered in the register of shareholders of the company shall enjoy the same rights and be subject to the same liabilities as all other shareholders of the same class.

(2) The following provisions shall have effect in so far as the articles of the company do not make other provision in that behalf :—

- (a) two or more members holding not less than one-tenth of the total share capital paid up or, if the company has not a share capital, not less than five per cent. in number of the members of the company may call a meeting ;
- (b) in the case of a private company two members and in the case of any other company five members personally present shall be a quorum ;
- (c) any member elected by the members present at a meeting may be chairman thereof ;
- (d) in the case of a company originally having a share capital, every member shall have one vote in respect of each share or each hundred rupees of stock held by him, and in any other case every member shall have one vote ;
- (e) on a poll votes may be given either personally or by proxy ;
- (f) the instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorised in writing, or if the appointor is a corporation, either under seal or under the hand of an officer or an attorney duly authorised ; and
- (g) a proxy must be a member of the company.

(3) If for any reason it is impracticable to call a meeting of a company in any manner in which meetings of that company may be called or to conduct the meeting of the company in manner prescribed by the articles or this Act, the Court may, either of its own motion or on the application of any director of the company or of any member of the company who would be entitled to vote at the meeting, order a meeting of the company to be called, held and conducted in such manner as the Court thinks fit, and where any such order is given may give such ancillary or consequential directions as it thinks expedient, and any meeting called, held and conducted in accordance with any

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such order shall for all purposes be deemed to be a meeting of the company duly called, held and conducted.]

80. A company which is a member of another company may, by resolution of the directors, authorise any of its officials or any other person to act as its representative at any meeting of that other company, and the person so authorised shall be entitled to exercise the same powers on behalf of the company which he represents as if he were an individual shareholder of that other company. Representa-
tion of com-
panies at
meetings of
other com-
panies of
which they
are members.

81. (1) A resolution shall be an extraordinary resolution when it has been passed by a majority of not less than three-fourths of such members entitled to vote as are present in person or by proxy (where proxies are allowed) at a general meeting of which notice specifying the intention to propose the resolution as an extraordinary resolution has been duly given. Extraordi-
nary and
special re-
solutions.

¹[(2) A resolution shall be a special resolution when it has been passed by such a majority as is required for the passing of an extraordinary resolution and at a general meeting of which not less than twenty-one days' notice specifying the intention to propose the resolution as a special resolution has been duly given :

Provided that, if all the members entitled to attend and vote at any such meeting so agree, a resolution may be proposed and passed as a special resolution at a meeting of which less than twenty-one days' notice has been given.]

(3) At any meeting at which an extraordinary resolution ²[or a special resolution is submitted to be passed] a declaration of the chairman on a show of hands that the resolution is carried shall, unless a poll is demanded, be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

(4) At any meeting at which an extraordinary resolution ³[or a special resolution is submitted to be passed] a poll may be demanded. ^{3*} *

(5) In a case where, if a poll is demanded, it may in accordance with the articles be taken in such manner as the chairman may direct ; it may, if the chairman so directs, be taken at the meeting at which it is demanded.

(6) When a poll is demanded in accordance with this section, in computing the majority on the poll, reference shall be had to the number of votes to which each member is entitled by the articles of the company, ⁴[or under this Act.]

(7) For the purposes of this section notice of a meeting shall be deemed to be duly given and the meeting to be duly held when the notice is given

¹ Subs. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 35, for the original sub-section.

² Subs. by s. 35, *ibid.*, for the words "is submitted to be passed or a special resolution is submitted to be passed or confirmed".

³ Certain words rep. by s. 35, *ibid.*

⁴ Ins. by s. 35, *ibid.*

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and the meeting held in manner provided by the articles, ¹[or under this Act.]

Registration
and copies of
special and
extraordinary
resolutions.

82. (1) A copy of every special and extraordinary resolution shall, within fifteen days from ²[the passing thereof] be printed or typewritten ³[and duly certified under the signature of an officer of the company] and filed with the registrar who shall record the same.

(2) Where articles have been registered, a copy of every special resolution for the time being in force shall be embodied in or annexed to every copy of the articles issued after the date of the resolution.

(3) Where articles have not been registered, a copy of every special resolution shall be forwarded in print to any member at his request, on payment of one rupee or such less sum as the company may direct.

(4) If a company makes default in so filing with the registrar a copy of a special or extraordinary resolution, it shall be liable to a fine not exceeding twenty rupees for every day during which the default continues.

(5) If a company makes default in embodying in or annexing to a copy of its articles or in forwarding in print to a member when required by this section a copy of a special resolution, it shall be liable to a fine not exceeding ten rupees for each copy in respect of which default is made.

(6) Every officer of a company, who knowingly and wilfully authorises or permits any default by the company in complying with the requirements of this section shall be liable to the like penalty as is imposed by this section on the company for that default.

Minutes of
proceedings
of general
meetings
and of its
directors.

83. (1) Every company shall cause minutes of all proceedings of general meetings and of its directors to be entered in books kept for that purpose.

(2) Any such minute, if purporting to be signed by the chairman of the meeting at which the proceedings were had, or by the chairman of the next succeeding meeting, shall be evidence of the proceedings.

(3) Until the contrary is proved, every general meeting of the company or meeting of directors in respect of the proceedings whereof minutes have been so made shall be deemed to have been duly called and held, and all proceedings had thereat to have been duly had, and all appointments of directors or liquidators shall be deemed to be valid.

⁴[(4) The books containing the minutes of proceedings of any general meeting of a company held after the ⁵commencement of the Indian Companies (Amendment) Act, 1936, shall be kept at the registered office of the company and shall during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose so that no less

¹ Ins. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 35.

² Subs. by s. 36, *ibid.*, for "the confirmation of the special resolution or from the passing of the extraordinary resolution, as the case may be."

³ Ins. by s. 36, *ibid.*

⁴ Sub-sections (4) to (7) ins. by s. 37, *ibid.*

⁵ The Act came into force on the 15th January, 1937.

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than two hours in each day be allowed for inspection) be open to the inspection of any member without charge.

(5) Any member shall at any time after seven days from the meeting be entitled to be furnished within seven days after he has made a request in that behalf to the company with a copy of any minutes referred to in sub-section (4) at a charge not exceeding six annas for every hundred words.

(6) If any inspection required under sub-section (4) of this section is refused or if any copy required under sub-section (5) of this section is not furnished within the time specified in sub-section (5) the company and every officer of the company who is knowingly and wilfully in default shall be liable in respect of each offence to a fine not exceeding twenty-five rupees and to a further fine to twenty-five rupees for every day during which the default continues.

(7) In the case of any such refusal or default, the Court may by order compel an immediate inspection of the books in respect of all proceedings of general meetings or direct that the copies required shall be sent to the persons requiring them.]

¹[Directors.

83A. ²[(1) Every company shall have at least three directors.]

Directors
obligatory.

(2) This section shall not apply to a private company ³[except a private company being a subsidiary company of a public company.]

83B. ⁴[(1)] In default of and subject to any regulations in the articles of a company other than a private company—

Appointment
of directors.

- (i) the subscribers of the memorandum shall be deemed to be the directors of the company until the first directors shall have been appointed ;
- (ii) the directors of the company shall be appointed by the members in general meeting ; and
- (iii) any casual vacancy occurring among the directors may be filled up by the directors, but the person so appointed shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last appointed a director.]

⁴[(2) Notwithstanding anything contained in the articles of a company other than a private company not less than two-thirds of the whole number of directors shall be persons whose period of office is liable to determination at any time by retirement of directors in rotation.

¹ This heading and ss. 83A and 83B were ins. by the Indian Companies (Amendment) Act, 1914 (11 of 1914), s. 2.

² Subs. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 38, for the original sub-section.

³ Ins. by s. 38, *ibid.*

⁴ The original s. 83B was renumbered as sub-section (1) of that section and sub-section (2) was added by s. 39, *ibid.*

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Provided that nothing herein contained shall apply to a company incorporated before the ¹commencement of the Indian Companies (Amendment) Act, 1936, where by virtue of the articles of the company the number of directors whose period of office is liable to determination at any time by retirement of directors in rotation falls below the two-thirds proportion mentioned in this section.] XXII of 1936.

Restrictions
on appoint-
ment or ad-
vertisement
of director.

84. (1) A person shall not be capable of being appointed director of a company by the articles, and shall not be named as a director or proposed director of a company in any prospectus issued by or on behalf of the company or in relation to any intended company or in any statement in lieu of prospectus filed by or on behalf of a company, unless, before the registration of the articles or the publication of the prospectus, or the filing of the statement in lieu of prospectus, as the case may be, he has by himself or by his agent authorised in writing—

(i) signed and filed with the registrar a consent in writing to act as such director; and

(ii) save in the case of ²[companies] not having a share capital, either signed the memorandum for a number of shares not less than his qualification (if any) ³[or taken from the company and paid or agreed to pay for his qualification shares] or signed and filed with the registrar a contract in writing to take from the company and pay for his qualification shares (if any) ³[or made and filed with the registrar an affidavit to the effect that a number of shares, not less than his qualification (if any), are registered in his name];

(2) On the application for registration of the memorandum and articles ³[, if any,] of a company the applicant shall file with the registrar a list of the persons who have consented to be directors of the company, and, if this list contains the name of any person who has not so consented, the applicant shall be liable to a fine not exceeding five hundred rupees.

(3) This section shall not apply to a private company ³[or a company which was a private company before becoming a public company] nor to a prospectus issued by or on behalf of a company after the expiration of one year from the date at which the company is entitled to commence business.

Qualification
of director.

85. (1) Without prejudice to the restrictions imposed by section 84, it shall be the duty of every director who is by the articles required to hold a specified share qualification, and who is not already qualified, to obtain his

¹ The Act came into force on the 15th January, 1937.

² Subs. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 40, for the words: "a company limited by guarantee and"

³ Ins. by s. 40, *ibid.*

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qualification within two months after his appointment, or such shorter time as may be fixed by the articles.

1* * * * * *

¹[(2)] If, after the expiration of the said period or shorter time, any unqualified person acts as a director of the company, he shall be liable to a fine not exceeding fifty rupees for every day between the expiration of the said period or shorter time and the last day on which it is proved that he acted as a director.

86. The acts of a director shall be valid notwithstanding any defect that may afterwards be discovered in his appointment or qualification : Provided that nothing in this section shall be deemed to give validity to acts done by a director after the appointment of such director has been shown to be invalid. Validity of acts of directors.

²[**86A.** (1) If any person being an undischarged insolvent acts as director or managing agent or manager of any company, he shall be liable to imprisonment for a term not exceeding two years or to a fine not exceeding one thousand rupees or to both. Ineligibility of bankrupt to act as director.

(2) In this section the expression "company" includes a company incorporated outside British India which has an established place of business within British India.]

²[**86B.** If in the case of any company provision is made by the articles or by any agreement entered into between any person and the company for empowering a director or manager of the company to assign his office as such to another person, any assignment of office made in pursuance of the said provision shall, notwithstanding anything to the contrary contained in the said provision, be of no effect unless and until it is approved by a special resolution of the company : Assignment of office by directors.

Provided that the exercise by a director of a power to appoint an alternate or substitute director to act for him during an absence of not less than three months from the district in which meetings of the directors are ordinarily held, if done with the approval of the board of directors, shall not be deemed to be an assignment of office within the meaning of this section :

Provided always that any such alternate or substitute director shall *ipso facto* vacate office if and when the appointor returns to the district in which meetings of the directors are ordinarily held.

Explanation.—For the purposes of the provisos to this section, the presidency-towns of Calcutta and Madras shall be deemed to be part of the 24-Parganas and Chingleput Districts, respectively, and the presidency-town of Bombay shall be deemed to be part of the Bombay Suburban and the Thana districts.]

¹ The original sub-section (2) of s. 85 was rep. and sub-section (3) was re-numbered (2) by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 41.

² Ins. by s. 42, *ibid.*

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Avoidance of provisions relieving liability of directors.

¹[86C. Save as provided in this section, any provision, whether contained in the articles of a company or in any contract with a company or otherwise, for exempting any director, manager or officer of the company or any person (whether an officer of the company or not) employed by the company as auditor from or indemnifying him against any liability which by virtue of any rule of law would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the company shall be void :

Provided that—

- (a) in relation to any such provision which is in force at the date of the ²commencement of the Indian Companies (Amendment) Act, 1936, this section shall have effect only on the expiration of a period of six months from that date, and
- (b) nothing in this section shall operate to deprive any person of any exemption or right to be indemnified in respect of anything done or omitted to be done by him while any such provision was in force, and
- (c) notwithstanding anything in this section, a company may, in pursuance of any such provision as aforesaid, indemnify any such director, manager, officer or auditor against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted, or in connection with any application under section 281 of this Act in which relief is granted to him by the Court.]

Loans of directors.

¹[86D. (1) No company shall make any loan or guarantee any loan made to a director of the company or to a firm of which such director is a partner or to a private company of which such director is a director.

(2) In the event of any contravention of sub-section (1) any director of the company who is a party to such contravention shall be punishable with fine which may extend to five hundred rupees, and if default is made in repayment of the loan or in discharging the guarantee shall be liable jointly and severally for the amount unpaid.

(3) This section shall not apply to a private company (except a private company which is the subsidiary company of a public company) or to a banking company.]

Director not to hold office of profit.

¹[86E. No director or firm of which such director is a partner or private company of which such director is a director shall without the consent of the company in general meeting hold any office of profit under the company except that of a managing director or manager or a legal or technical adviser or a banker :

¹ Ins. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 42.

² The Act came into force on the 15th January, 1937.

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1936.

Provided that nothing herein contained shall apply to a director elected or appointed before the ¹commencement of the Indian Companies (Amendment) Act, 1936, in respect of any office of profit under the company held by him at the commencement of the said Act.

Explanation.—For the purposes of this section the office of managing agent shall not be deemed to be an office of profit under the company.]

²[**86F.** Except with the consent of the directors, a director of the company, or the firm of which he is a partner or any partner of such firm, or the private company of which he is a member or director, shall not enter into any contracts for the sale, purchase or supply of goods and materials with the company, provided that nothing herein contained shall affect any such contract or agreement for such sale, purchase or supply entered into before the ¹commencement of the Indian Companies (Amendment) Act, 1936.]

Sanction of
directors
necessary
for certain
contract.XXII of
1936.

²[**86G.** (1) The company may by extraordinary resolution remove any director, whose period of office is liable to determination at any time by retirement of directors in rotation, before the expiration of his period of office and may by ordinary resolution appoint another person in his stead. The person so appointed shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected director. A director so removed shall not be re-appointed a director by the board of directors.

Removal of
directors.XXII of
1936.

(2) This section shall not apply to directors elected or appointed before the ¹commencement of the Indian Companies (Amendment) Act, 1936.]

²[**86H.** The directors of a public company or of a subsidiary company of a public company shall not, except with the consent of the company concerned in general meeting,—

Restrictions
on powers of
directors.

(a) sell or dispose of the undertaking of the company ;

(b) remit any debt due by a director.]

²[**86I.** (1) The office of a director shall be vacated if—

Vacation of
Office of
Director.

(a) he fails to obtain within the time specified in sub-section (1) of section 84, or at any time thereafter ceases to hold, the share qualification, if any, necessary for his appointment, or

(b) he is found to be of unsound mind by a Court of competent jurisdiction, or

(c) he is adjudged an insolvent, or

(d) he fails to pay calls made on him in respect of shares held by him within six months from the date of such calls being made, or

(e) he or any firm of which he is a partner or any private company of which he is a director without the sanction of the company in general meeting accepts or holds any office of profit under the

¹ The Act came into force on the 15th January, 1937.

² Ins. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 42.

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company other than that of a managing director or manager or a legal or technical adviser or a banker, or

- (f) he absents himself from three consecutive meetings of the directors or from all meetings of the directors for a continuous period of three months whichever is the longer without leave of absence from the board of directors, or
- (g) he or any firm of which he is a partner or any private company of which he is a director accepts a loan or guarantee from the company in contravention of section 86D, or
- (h) he acts in contravention of section 86F.

(2) Nothing contained in this section shall be deemed to preclude a company from providing by its articles that the office of director shall be vacated on grounds additional to those specified in this section.]

Register of
directors,
managers and
managing
agents.

¹[87. (1) Every company shall keep at its registered office a register of its directors, managers and managing agents containing with respect to each of them the following particulars, that is to say :—

- (a) in the case of an individual, his present name in full, any former name or surname in full, his usual residential address, his nationality and, if that nationality is not the nationality of origin, his nationality of origin and his business occupation, if any, and if he holds any other directorship or directorships the particulars of such directorship or directorships ;
- (b) in the case of a corporation, its corporate name and registered or principal office ; and the full name, address and nationality of each of its directors ; and
- (c) in the case of a firm, the full name, address and nationality of each partner, and the date on which each became a partner.

(2) The company shall within the periods respectively mentioned in this sub-section send to the registrar a return in the prescribed form containing the particulars specified in the said register and a notification in the prescribed form of any change among its directors, managers or managing agents or in any of the particulars contained in the register.

The period within which the said return is to be sent shall be a period of fourteen days from the appointment of the first directors of the company and the period within which the said notification of a change is to be sent shall be fourteen days from the happening thereof.

(3) The register to be kept under this section shall during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose, so that not less than two hours in each day be allowed for inspection) be open to the inspection of any member of the company without charge and of any other person on payment of one rupee or such less sum as the company may impose for each inspection.

¹ Subs. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 43, for the original section.

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(4) If any inspection required under this section is refused or if default is made in complying with sub-section (1) or sub-section (2) of this section, the company and every officer of the company who is knowingly and wilfully in default shall be liable to a fine of fifty rupees.

(5) In the case of any such refusal, the Court on application made by the person to whom inspection has been refused and upon notice to the company may by order direct an immediate inspection of the register.]

¹[*Managing Agents.*]XXII of
1936.

¹[87A. (1) No managing agent shall, after the ²commencement of the Indian Companies (Amendment) Act, 1936, be appointed to hold office for a term of more than twenty years at a time. Duration of appointment of managing agent.

XXII of
1936.

(2) Notwithstanding anything to the contrary contained in the articles of a company or in any agreement with the company a managing agent of a company appointed before the ²commencement of the Indian Companies (Amendment) Act, 1936, shall not continue to hold office after the expiry of twenty years from the commencement of the said Act unless then reappointed thereto or unless he has been reappointed thereto before the expiry of the said twenty years.

(3) A managing agent whose office is terminated by virtue of the provisions of sub-section (2) shall upon such termination be entitled to a charge upon the assets of the company by way of indemnity for all liabilities or obligations properly incurred by the managing agent on behalf of the company subject to existing charges and encumbrances, if any.

(4) The termination of the office of a managing agent by virtue of the provisions of sub-section (2) shall not take effect until all moneys payable to the managing agent for loans made to or remuneration due up to the date of such termination from the company are paid.

(5) Nothing in this section shall apply to a private company which is not the subsidiary company of a public company.]

¹[87B. Notwithstanding anything to the contrary contained in the articles of the company or in any agreement with the company— Conditions applicable to managing agents.

(a) a company may, by resolution passed at a general meeting of which notice has been given to the managing agent in the same manner as to members of the company, remove a managing agent if he is convicted of an offence in relation to the affairs of the company punishable under the Indian Penal Code, and being under the provisions of the Code of Criminal Procedure, 1898, non-bailable; and for the purposes of this clause, where the managing agent is a firm or company an offence committed

XLV of 1860.

V of 1898.

¹ Ins. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 44.

² The Act came into force on the 15th January, 1937.

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by a member of such firm or a director of or an officer holding a general power of attorney from such company shall be deemed to be an offence committed by such firm or company :

Provided that a managing agent shall not be liable to be removed under the provisions hereof if the offending member, director or officer as aforesaid is expelled or dismissed by the managing agent within thirty days from the date of his conviction or if his conviction is set aside on appeal ;

- (b) the office of a managing agent shall be vacated if he is adjudged insolvent ;
- (c) a transfer of his office by a managing agent shall be void unless approved by the company in general meeting :

Provided that in the case of a managing agent's firm a change in the partners thereof shall not be deemed to operate as a transfer of the office of managing agent, so long as one of the original partners shall continue to be a partner of the managing agent's firm. For the purpose of this proviso 'original partners' shall mean, in the case of managing agents appointed before the ¹commencement of the Indian Companies (Amendment) Act, XXII of 1936, partners who were partners at the date of the commencement of the said Act, and in the case of managing agents appointed after the commencement of the said Act, partners who were partners at the date of the appointment ;

- (d) a charge or assignment of his remuneration or any part thereof effected by a managing agent shall be void as against the company ;
- (e) if a company is wound up either by the Court or voluntarily, any contract of management made with a managing agent shall be thereupon determined without prejudice, however, to the right of the managing agent to recover any moneys recoverable by the managing agent from the company : Provided that where the Court finds that the winding up is due to the negligence or default of the managing agent himself the managing agent shall not be entitled to receive any compensation for the premature termination of his contract of management ; and
- (f) the appointment of a managing agent, the removal of a managing agent and any variation of a managing agent's contract of management made after the ¹commencement of the Indian Companies (Amendment) Act, 1936, shall not be valid unless XXII of 1936. approved by the company by a resolution at a general meeting of the company notwithstanding anything to the contrary in section 86E :

¹ The Act came into force on the 15th January, 1937.

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Provided that nothing herein contained shall apply to the appointment of a company's first managing agent made prior to the issue of the prospectus or statement in lieu of prospectus where the terms of the appointment of such managing agent are there set forth.]

XXII of
1936.

¹[87C. (1) Where any company appoints a managing agent after the commencement of the Indian Companies (Amendment) Act, 1936, the remuneration of the managing agent shall be a sum based on a fixed percentage of the net annual profits of the company, with provision for a minimum payment in the case of absence of or inadequacy of profits, together with an office allowance to be defined in the agreement of management. Remuneration of managing agent.

(2) Any stipulation for remuneration additional to or in any other form than the remuneration specified in sub-section (1) shall not be binding on the company unless sanctioned by a special resolution of the company.

(3) For the purposes of this section 'net profits' means the profits of the company calculated after allowing for all the usual working charges, interest on loans and advances, repairs and outgoings, depreciation, bounties or subsidies received from ³[any Government] or from a public body, profits by way of premium on shares sold, profits on sale proceeds of forfeited shares, or profits from the sale of the whole or part of the undertaking of the company but without any deduction in respect of income-tax or super-tax, or any other tax or duty on income or revenue or for expenditure by way of interest on debentures or otherwise on capital account or on account of any sum which may be set aside in each year out of the profits for reserve or any other special fund.

(4) This section shall not apply to a private company except a private company which is the subsidiary company of a public company or to any company whose principal business is the business of insurance.]

¹[87D. (1) No company shall make to a managing agent of the company or to any partner of the firm, if the managing agent is a firm, or to any director of the private company, if the managing agent is a private company, any loan out of moneys of the company or guarantee any loan made to a managing agent. Loans to managing agents.

(2) Nothing contained in this section shall apply to any credit held by a managing agent in a current account maintained subject to limits previously approved by the board of directors by the company with the managing agent for the purposes of the company's business.

(3) In the event of any contravention of sub-section (1) any director of the company who is a party to the making of the loan or giving of the guarantee shall be punishable with fine which may extend to five hundred rupees, and

¹ Ins. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 44.

² The Act came into force on the 15th January, 1937.

³ Subs. by the A. O. for "Govt.".

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if default is made in repayment of the loan or discharging the guarantee shall be liable jointly and severally for the amount unpaid.

(4) Nothing in this section shall apply to a private company except a private company which is the subsidiary company of a public company.

(5) Except with the consent of three-fourths of the directors present and entitled to vote on the resolution, a managing agent of the company, or the firm of which he is a partner, or any partner of such firm, or, if the managing agent is a private company, a member or director thereof, shall not enter into any contract for the sale, purchase or supply of goods and materials with the company, provided that nothing herein contained shall affect any such contract for such sale, purchase or supply entered into before the ¹commencement of the Indian Companies (Amendment) Act, 1936.] XXII of 1936.

Loans to or by companies under the same management.

²[**87E.** (1) No company incorporated under this Act after the ¹commencement of the Indian Companies (Amendment) Act, 1936, which is under the management of a managing agent shall make any loan to or guarantee any loan made to any company under management by the same managing agent, and no company shall after the expiry of six months from the commencement of the said Act except by way of renewal of an existing loan or guarantee given make any loan to or guarantee any loan made to any such company :

Provided that nothing herein contained shall apply to loans made or guarantees given by a company to or on behalf of a company under its own management or loans made by or to a company to or by a subsidiary company thereof or to guarantees given by a company on behalf of a subsidiary company thereof.

(2) In the event of any contravention of the provisions of this section, any director or officer of the company making the loan or giving the guarantee who is knowingly and wilfully in default shall be liable to a fine not exceeding one thousand rupees and shall be jointly and severally liable for any loss incurred by the company in respect of such loan or guarantee.]

Purchase by company of shares of company under same managing agent.

²[**87F.** A company other than an investment company, that is to say, a company whose principal business is the acquisition and holding of shares, stocks, debentures or other securities, shall not purchase shares or debentures of any company under management by the same managing agent, unless the purchase has been previously approved by a unanimous decision of the board of directors of the purchasing company.]

Restriction on managing agent's powers of management.

²[**87G.** A managing agent shall not exercise in respect of any company of which he is a managing agent a power to issue debentures or, except with the authority of the directors, and within the limits fixed by them, a power to invest the funds of the company, and any delegation of any such power by a company to a managing agent shall be void.]

¹ The Act came into force on the 15th January, 1937.

² Ins. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 44.

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¹[87H. A managing agent shall not on his own account engage in any business which is of the same nature as and directly competes with the business carried on by a company under his management or by a subsidiary company of such company.]

Managing agent not to engage in business competing with the business of managed company.

¹[87I. Notwithstanding anything contained in the articles of a company other than a private company the directors, if any, appointed by the managing agent shall not exceed in number one-third of the whole number of directors.]

Limit on number of directors appointed by managing agent.

Contracts.

88. (1) Contracts on behalf of a company may be made as follows (that is to say):—

Form of contracts.

(i) any contract which, if made between private persons, would be by law required to be in writing, signed by the parties to be charged therewith, may be made on behalf of the company in writing signed by any person acting under its authority, express or implied, and may in the same manner be varied or discharged ;

(ii) any contract which, if made between private persons, would by law be valid although made by parol only, and not reduced into writing, may be made by parol on behalf of the company by any person acting under its authority, express or implied, and may in the same manner be varied or discharged.

(2) All contracts made according to this section shall be effectual in law and shall bind the company and its successors and all other parties thereto, their heirs, or legal representatives, as the case may be.

89. A bill of exchange, hundi or promissory note shall be deemed to have been made, drawn, accepted or endorsed on behalf of a company if made, drawn, accepted or endorsed in the name of, or by or on behalf or on account of, the company by any person acting under its authority, express or implied.

Bills of exchange and promissory notes.

90. A company may, by writing under its common seal, empower any person, either generally or in respect of any specified matters, as its attorney, to execute deeds on its behalf in any place ²[either in or outside British India] ; and every deed signed by such attorney, on behalf of the company, and under his seal, where sealing is required, shall bind the company, and have the same effect as if it were under its common seal.

Execution of deeds.

91. (1) A company whose objects require or comprise the transaction of business beyond the limits of British India may, if authorised by its articles,

Power for company to have official

¹ Ins. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 44.

² Subs. by s. 45, *ibid.*, for "not situate in British India".

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seal for use
abroad.

have for use in any territory, district or place not situate in British India, an official seal which shall be a facsimile of the common seal of the company, with the addition on its face of the name of every territory, district or place where it is to be used.

(2) A company having such an official seal may, by writing under its common seal, authorise any person appointed for the purpose in any territory, district or place not situate in British India to affix the same to any deed or other document to which the company is party in that territory, district or place.

(3) The authority of any such agent shall, as between the company and any person dealing with the agent, continue during the period (if any) mentioned in the instrument conferring the authority, or if no period is there mentioned, then until notice of the revocation or determination of the agent's authority has been given to the person dealing with him.

(4) The person affixing any such official seal shall, by writing under his hand, on the deed or other document to which the seal is affixed, certify the date and place of affixing the same.

(5) A deed or other document to which an official seal is duly affixed shall bind the company as if it had been sealed with the common seal of the company.

Disclosure
of interest
by director.

¹[91A. (1) Every director who is directly or indirectly concerned or interested in any contract or arrangement entered into by or on behalf of the company shall disclose the nature of his interest at the meeting of the directors at which the contract or arrangement is determined on, if his interest then exists, or in any other case at the first meeting of the directors after the acquisition of his interest or the making of the contract or arrangement :

Provided that a general notice that a director is a ²[director or a member of any specified company or is a member of any specified firm], and is to be regarded as interested in any subsequent transaction with such firm or company, shall as regards any such transaction be sufficient disclosure within the meaning of this sub-section and after such general notice, it shall not be necessary to give any special notice relating to any particular transaction with such firm or company.

(2) Every director who contravenes the provisions of sub-section (1) shall be liable to a fine not exceeding one thousand rupees.]

³[(3) A register shall be kept by the company in which shall be entered particulars of all contracts or arrangements to which sub-section (1) applies, and which shall be open to inspection by any member of the company at the registered office of the company during business hours.

¹ Ins. by the Indian Companies (Amendment) Act, 1914 (11 of 1914), s. 3.

² Subs. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 46, for " member of any specified firm or company ".

³ Sub-sections (3) and (4) were ins. by s. 46, *ibid.*

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(4) Every officer of the company who knowingly and wilfully acts in contravention of the provisions of sub-section (3) shall be liable to a fine not exceeding five hundred rupees.]

¹[**91B.** (1) No director shall, as a director, vote on any contract or arrangement in which he is either directly or indirectly concerned or interested ^{Prohibition of voting by interested director.}
²[nor shall his presence count for the purpose of forming a quorum at the time of any such vote] ; and if he does so vote, his vote shall not be counted :

Provided that the directors or any of them may vote on any contract of indemnity against any loss which they or any one or more of them may suffer by reason of becoming or being sureties or surety for the company.

(2) Every director who contravenes the provisions of sub-section (1) shall be liable to a fine not exceeding one thousand rupees.]

³[(3) This section shall not apply to a private company.]

²[Provided that where a private company is a subsidiary company of a public company, this section shall apply to all contracts or arrangements made on behalf of the subsidiary company with any person other than the holding company.]

¹[**91C.** (1) Where a company enters into a contract for the appointment of a manager ^{Disclosure to members in case of contract appointing a manager.} ⁴[or managing agent] of the company in which contract any director of the company is directly or indirectly concerned or interested, or varies any such existing contract, the company shall, ⁴[within twenty-one days from the date of entering into the contract or the varying of the contract,] send an abstract of the terms of such contract or variation, as the case may be, together with a memorandum clearly indicating the nature of the interest of the director in such contract, or in such variation, to every member ; and the contract shall be open to the inspection of any member at the registered office of the company.

(2) If a company makes default in complying with the requirements of sub-section (1), it shall be liable to a fine not exceeding one thousand rupees ; and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.]

¹[**91D.** (1) Every manager or other agent of a company other than a private company ^{Contracts by agents of company in which company is undisclosed principal.} ⁵[not being the subsidiary company of a public company] who enters into a contract for or on behalf of the company in which contract the company is an undisclosed principal shall, at the time of entering into the contract, make a memorandum in writing of the terms of the contract, and specify therein the person with whom it has been made.

¹ Ins. by the Indian Companies (Amendment) Act, 1914 (11 of 1914), s. 3.

² Ins. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 47.

³ Ins. by the Indian Companies (Amendment) Act, 1920 (42 of 1920), s. 2.

⁴ Ins. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 48.

⁵ Ins. by s. 49, *ibid.*

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(2) Every such manager or other agent shall forthwith deliver the memorandum aforesaid to the company ¹[and send copies to the directors], and such memorandum shall be filed in the office of the company and laid before the directors at the next directors' meeting.

(3) If any such manager or other agent makes default in complying with the requirements of this section—

- (a) the contract shall, at the option of the company, be void as against the company ; and
- (b) such manager or other agent shall be liable to a fine not exceeding two hundred rupees.]

Prospectus.

Filing of
prospectus.

92. (1) Every prospectus issued by or on behalf of a company or in relation to any intended company shall be dated, and that date shall, unless the contrary be proved, be taken as the date of publication of the prospectus.

(2) A copy of every such prospectus, signed by every person who is named therein as a director or proposed director of the company, or by his agent authorised in writing, shall be filed for registration with the registrar on or before the date of its publication, and no such prospectus shall be issued until a copy thereof has been so filed for registration.

(3) The registrar shall not register any prospectus unless it is dated, and the copy thereof signed, in manner required by this section.

(4) Every prospectus shall state on the face of it that a copy has been filed for registration as required by this section.

(5) If a prospectus is issued without a copy thereof being so filed, the company, and every person who is knowingly a party to the issue of the prospectus, shall be liable to a fine not exceeding fifty rupees for every day from the date of the issue of the prospectus until a copy thereof is so filed.

Specific re-
quirements
as to parti-
culars of
prospectus.

93. (1) Every prospectus issued by or on behalf of a company, or by or on behalf of any person who is or has been engaged or interested in the formation of the company, shall state—

- (a) the contents of the memorandum, with the names, descriptions and addresses of the signatories and the number of shares subscribed for by them respectively ; and the number of founders or management or deferred shares (if any) and the nature and extent of the interest of the holders in the property and profits of the company ²[and the number of redeemable preference shares intended to be issued with the date or, where no date is fixed, the period of notice required and the proposed method of redemption] ; and



¹ Ins. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 49.

² Ins. by s. 50, *ibid.*

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- (b) the number of shares (if any) fixed by the articles as the qualification of a director, and any provision in the articles as to the remuneration of the directors ; and
- (c) the names, descriptions and addresses of the directors or proposed directors and of the managers or proposed managers ¹[and managing agents or proposed managing agents] (if any) ¹[and any provision in the articles or in any contract as to the appointment of managers or managing agents and the remuneration payable to them] ; and
- (d) the minimum subscription on which the directors may proceed to allotment, and the amount payable on application and allotment on each share ; and in the case of a second or subsequent offer of shares the amount offered for subscription on each previous allotment made within the two preceding years, and the amount actually allotted, and the amount (if any) paid on the shares so allotted ; and
- (e) the number and amount of shares and debentures which within the two preceding years have been issued, or agreed to be issued, as fully or partly paid up otherwise than in cash, and in the latter case the extent to which they are so paid up, and in either case the consideration for which those shares or debentures have been issued or agreed to be issued ; and
- ¹[(ee) where any issue of shares or debentures is underwritten, the names of the underwriters, and the opinion of the directors that the resources of the underwriters are sufficient to discharge the underwriting obligations ; and]
- (f) the names and addresses of the vendors of any property purchased or acquired by the company, or proposed so to be purchased or acquired, which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus, or the purchase or acquisition of which has not been completed at the date of issue of the prospectus, and the amount payable in cash, shares or debentures to the vendor, and where there is more than one separate vendor or the company is a sub-purchaser, the amount so payable to each vendor : Provided that where the vendors or any of them are a firm, the members of the firm shall not be treated as separate vendors ; and
- ¹[(ff) where any property referred to in clause (f) has within the two years preceding the issue of the prospectus been transferred by sale, the amount paid by the purchaser at each such transfer so far as the information is available and, where any such

¹ Ins. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 50.

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property is a business, the profits accruing from such business during each of the three years immediately preceding the issue of the prospectus or during each year of the existence of the business if less than three years so far as the information is available. A balance sheet of the business concerned made up to a date not more than ninety days before the date of the issue of the prospectus shall be appended to the prospectus ; and]

- (g) the amount (if any) paid or payable as purchase-money in cash, shares or debentures, for any such property as aforesaid, specifying the amount (if any) payable for goodwill ; and
- (h) the amount (if any) paid within the two preceding years or payable, as commission for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions, for any shares in, or debentures of, the company, ¹[or as discount in respect of shares issued, showing separately the amount, if any, so paid to the managing agents] : Provided that it shall not be necessary to state the commission payable to sub-underwriters ; and
- (i) the amount or estimated amount of preliminary expenses ; and
- (k) the amount paid within the two preceding years or intended to be paid to any promoter, and the consideration for any such payment ; and
- (l) the dates of, and parties to, every material contract ²[including contracts relating to the acquisition of property to which clause (f) applies], and a reasonable time and place at which any material contract or a copy thereof may be inspected : Provided that this requirement shall not apply to a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company, or to any contract ²[(except a contract appointing or fixing the remuneration of a managing director or managing agent)] entered into more than two years before the date of issue of the prospectus ; and
- (m) the names and addresses of the auditors (if any) of the company ; and
- (n) full particulars of the nature and extent of the interest (if any) of every director in the promotion of, or in the property proposed to be acquired by, the company, or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares or otherwise by any person either to induce him to become, or to qualify him as, a director, or otherwise for services ren-

¹ Subs. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 50, for the words " or the rate of any such commission ".

² Ins.; *ibid.*

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dered by him or by the firm in connection with the promotion or formation of the company ; and

(o) where the company is a company having shares of more than one class, the right of voting at meetings of the company conferred by, ¹[and the rights in respect of capital and dividends attached to], the several classes of shares respectively ; ¹[and]

¹[(p) where the articles of the company impose any restrictions upon the members of the company in respect of the right to attend, speak or vote at meetings of the company or of the right to transfer shares, or upon the directors of the company in respect of their powers of management, the nature and extent of those restrictions ;] ²[and]

²[(q) where any part of the sums required for the matters set out in sub-section (2) of section 101 is to be provided out of sources other than share capital, particulars of the amount to be so provided and the sources thereof.]

¹[(1A) Where the prospectus is issued by a company which has been carrying on business prior to the issue thereof, the prospectus shall set out the following reports in addition to the matters referred to in sub-section (1), namely :—

(i) a report by the auditors of the company with respect to the profits of the company including its subsidiary companies, if any, so far as the information is available in each of the three financial years immediately preceding the issue of the prospectus and with respect to the rates of the dividends, if any, paid by the company on each class of shares in the company for each of the said three years giving particulars of each such class of shares on which such dividends have been paid and the source from which the dividends have been paid and particulars of the cases in which no dividends have been paid on any class of shares for any of those years, and if no accounts have been made up for any part of a period of three years ending on a date three months before the issue of the prospectus, containing a statement of that fact ;

(ii) if the proceeds or any part of the proceeds of the issue of the shares or debentures are or is to be applied directly or indirectly in the purchase of any business, a report made by an accountant or accountants holding the certificate referred to in section 144 who shall be named in the prospectus upon the profits of the business in respect of each of the three financial years immediately preceding the issue of the prospectus :

¹ Ins. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 50.

² Ins. by the Repealing and Amending Act, 1937 (20 of 1937), s. 2 and Sch. I.

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Provided that if, in the case of a company which has been carrying on business for less than three years, the accounts of the company have been made up only in respect of two years or any shorter period, this sub-section shall have effect as if references to two years or such shorter period were substituted for references to three years.]

¹[(1B) The statement referred to in clause (ff) of sub-section (1) and the report referred to in sub-section (1A) with respect to the profits of a company or business shall show clearly the trading results and all charges and expenses incidental thereto excluding income or profits having no relation to the trading for the period covered and excluding also items of profit or income of a non-recurring nature but including amounts appropriated from profits to such purposes as payment of taxation or reserves.]

2* * * * *

(2) Where any such prospectus as is mentioned in this section is published as a newspaper advertisement, it shall not be necessary in the advertisement to specify the contents of the memorandum, or the signatories thereto, and the number of shares subscribed for by them.

(3) This section shall not apply to a circular or notice inviting existing members or debenture-holders of a company to subscribe either for shares or for debentures of the company, whether with or without the right to renounce in favour of other persons.

(4) The requirements of this section as to the memorandum and the qualification, remuneration and interest of directors, the names, descriptions and addresses of directors or proposed directors, and of managers or proposed managers, and the amount or estimated amount of preliminary expenses, shall not apply in the case of a prospectus issued more than one year after the date at which the company is entitled to commence business :

¹[Provided that the said requirements, except the requirement as to the amount or estimated amount of preliminary expenses, shall apply to a prospectus filed in pursuance of section 154.]

(5) Nothing in this section shall limit or diminish any liability which any person may incur under the general law or this Act apart from this section.

Meaning of
"vendor"
in section 93.

94. For the purposes of section 93 every person shall be deemed to be a vendor who has entered into any contract, absolute or conditional, for the sale or purchase, or for any option of purchase, of any property to be acquired by the company, in any case where—

(a) the purchase-money is not fully paid at the date of issue of the prospectus ; or

(b) the purchase-money is to be paid or satisfied wholly or in part out of the proceeds of the issue offered for subscription by the prospectus ; or

¹ Ins. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 50.

² Sub-section (1C), which had been ins. by s. 50, *ibid.*, was rep. by the Repealing and Amending Act, 1937 (20 of 1937), s. 3 and Sch. II.

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(c) the contract depends for its validity or fulfilment on the result of that issue.

95. Where any of the property to be acquired by the company is to be taken on lease, section 93 shall apply as if the expression "vendor" included the lessor, and the expression "purchase-money" included the consideration for the lease, and the expression "sub-purchaser" included a sub-lessee.

Application of section 93 to the case of property taken on lease.

96. ¹[(1)] Any condition requiring or binding any applicant for shares or debentures to waive compliance with any requirements of section 93, or purporting to affect him with notice of any contract, document or matter not specifically referred to in the prospectus, shall be void.

Invalidation of certain conditions as to waiver or notice.

¹[(2)] It shall not be lawful to issue any form of application for the shares in or debentures of a company unless the form is issued with a prospectus which complies with the requirements of section 93 :

Provided that this sub-section shall not apply if it is shown that the form of application was issued either—

(a) in connection with a *bonâ fide* invitation to a person to enter into an underwriting agreement with respect to the shares or debentures ; or

(b) in relation to shares or debentures which were not offered to the public.

If any person acts in contravention of the provisions of this sub-section, he shall be liable to a fine not exceeding five hundred rupees.]

97. ²[(1)] If a prospectus is issued which does not comply with the provisions of section 93, every person who is knowingly responsible for the issue of such prospectus shall be liable to a fine not exceeding fifty rupees for every day from the day of the issue of the prospectus until a copy complying with the requirements of section 93 is filed.]

Saving in certain cases of non-compliance with section 93.

²[(2)] In the event of non-compliance with ³[or contravention of] any of the requirements of section 93, a director or other person responsible for the prospectus shall not incur any liability by reason of the non-compliance ³[or contravention] if he proves that—

(a) as regards any matter not disclosed, he was not cognisant thereof ; or

(b) the non-compliance ³[or contravention] arose from an honest mistake of fact on his part ; ³[or

(c) the non-compliance or contravention was in respect of matters which in the opinion of the Court were immaterial, or was otherwise such as ought in the opinion of the Court having regard to all the circumstances of the case reasonably to be excused ;]

¹ The original s. 96 was re-numbered as sub-section (1) of that section and sub-section (2) was added, by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 51.

² The original s. 97 was re-numbered as sub-section (2) of that section and sub-section (1) was ins. by s. 52, *ibid*.

³ Ins. by s. 52, *ibid*.

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Provided that, in the event of non-compliance with ¹[or contravention of] the requirements contained in clause (n) of sub-section (I) of section 93, no such director or other person shall incur any liability in respect of the non-compliance ¹[or contravention] unless it be proved that he had knowledge of the matters not disclosed.

Obligations of companies where no prospectus is issued.

98. (1) A company which does not issue a prospectus on or with reference to its formation shall not allot any of its shares or debentures unless before the first allotment of either shares or debentures there has been filed with the registrar a statement in lieu of prospectus signed by every person who is named therein as a director or a proposed director of the company or by his agent authorised in writing, in the form and containing the particulars ²[set out in the form marked I in the Second Schedule].

(2) This section shall not apply to a private company or to a company which has allotted any shares or debentures before the commencement of this Act or, in so far as it relates to the allotment of shares to a company limited by guarantee and not having a share capital.

Document offering shares or debentures for sale to be deemed a prospectus.

³98A. (1) Where a company allots or agrees to allot any shares in or debentures of the company with a view to all or any of those shares or debentures being offered for sale to the public, any document by which the offer for sale to the public is made shall for all purposes be deemed to be a prospectus issued by the company and all enactments and rules of law as to the contents of prospectuses and to liability in respect of statements in and omissions from prospectuses or otherwise relating to prospectuses shall apply and have effect accordingly as if the shares or debentures had been offered to the public for subscription and as if persons accepting the offer in respect of any shares or debentures were subscribers for those shares or debentures but without prejudice to the liability, if any, of the persons by whom the offer is made in respect of mis-statements contained in the document or otherwise in respect thereof.

(2) For the purposes of this Act it shall, unless the contrary is proved, be evidence that an allotment of or an agreement to allot shares or debentures was made with a view to the shares or debentures being offered for sale to the public, if it is shown—

- (a) that an offer of the shares or debentures or of any of them for sale to the public was made within six months after the allotment or agreement to allot; or
- (b) that at the date when the offer was made the whole of the consideration to be received by the company in respect of the shares or debentures had not been so received.

(3) Section 97 shall apply to the person or persons making the offer as though they were persons named in a prospectus as directors of a company,

¹ Ins. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 52.

² Subs. by s. 53, *ibid.*, for "set out in the Second Sch."

³ Ins. by s. 54, *ibid.*

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and the provisions of section 93 shall have effect as if it required a prospectus to state, in addition to the matters required by that section to be stated in a prospectus,—

- (a) the net amount of the consideration received or to be received by the company in respect of the shares or debentures to which the offer relates, and
- (b) the place and time at which the contract under which the said shares or debentures have been or are to be allotted may be inspected.

(4) Where a person making an offer to which this section relates is a company or a firm, it shall be sufficient if the document aforesaid is signed on behalf of the company or firm by all directors of the company or not less than half of the partners, as the case may be, and any such director or partner may sign by his agent authorised in writing.]

99. A company shall not, at any time, vary the terms of a contract referred to in the prospectus or statement in lieu of prospectus, except subject to the approval of the company in general meeting.

Restriction on alteration of terms mentioned in prospectus or statement in lieu of prospectus.

100. (1) Where a prospectus invites persons to subscribe for shares in or debentures of a company, every person who is a director of the company at the time of the issue of the prospectus, and every person who has authorised the naming of himself and is named in the prospectus as a director or as having agreed to become a director either immediately or after an interval of time, and every promoter of the company, and every person who has authorised the issue of the prospectus, shall be liable to pay compensation to all persons who subscribe for any shares or debentures on the faith of the prospectus for all loss or damage they may have sustained by reason of any misleading or untrue statement therein, or in any report or memorandum appearing on the face thereof, or by reference incorporated therein or issued therewith, unless it is proved—

Liability for statements in prospectus.

- (a) with respect to every misleading or untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, that he had reasonable ground to believe and did up to the time of the allotment of the shares or debentures, as the case may be, believe that the statement fairly represented the facts or was true ;
- (b) with respect to every misleading or untrue statement purporting to be a statement by or contained in what purports to be a copy of or extract from a report or valuation of an expert, that it fairly represented the statement, or was a correct and fair copy of or extract from the report or valuation : Provided that the director, person named as director, promoter or

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person who authorised the issue of the prospectus shall be liable to pay compensation as aforesaid if it is proved that he had no reasonable ground to believe that the person making the statement, report or valuation was competent to make it; and

- (c) with respect to every misleading or untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, that it was a correct and fair representation of the statement or copy of or extract from the document;

or unless it is proved—

- (i) that having consented to become a director of the company he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent; or
- (ii) that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue, he forthwith gave a reasonable public notice that it was issued without his knowledge or consent; or
- (iii) that, after the issue of the prospectus and before allotment thereunder, he, on becoming aware of any misleading or untrue statement therein, withdrew his consent thereto, and gave reasonable public notice of the withdrawal, and of the reason therefor.

(2) Where a company existing at the commencement of this Act has issued shares or debentures, and for the purpose of obtaining further capital by subscriptions for shares or debentures issues a prospectus, a director shall not be liable in respect of any statement therein unless he has authorised the issue of the prospectus, or has adopted or ratified it.

(3) Where the prospectus contains the name of a person as a director of the company, or as having agreed to become a director thereof, and he has not consented to become a director or has withdrawn his consent before the issue of the prospectus and has not authorised or consented to the issue thereof, the directors of the company, except any without whose knowledge or consent the prospectus was issued, and any other person who authorised the issue thereof, shall be liable to indemnify the person named as aforesaid against all damages, costs and expenses to which he may be made liable by reason of his name having been inserted in the prospectus, or in defending himself against any suit or legal proceedings brought against him in respect thereof.

(4) Every person who, by reason of his being a director or named as a director, or as having agreed to become a director, or of his having authorised the issue of the prospectus, becomes liable to make any payment under this section, may recover contribution, as in cases of contract, from any other person who, if sued separately, would have been liable to make the same payment, unless the person who has become so liable was, and that other person was not, guilty of fraudulent misrepresentation.

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(5) For the purposes of this section—

- (a) the expression “promoter” means a promoter who was a party to the preparation of the prospectus, or the portion thereof containing the misleading or untrue statement, but does not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company ;
- (b) the expression “expert” includes engineer, valuer, accountant and any other person whose profession gives authority to a statement made by him.

Allotment.

101. ¹[(1) No allotment shall be made of any share capital of a com- Restriction as to allotment.
pany offered to the public for subscription unless the amount stated in the prospectus as the minimum amount which in the opinion of the directors must be raised by the issue of share capital in order to provide the sums or, if any part thereof is to be defrayed in any other manner, the balance of the sum required to be provided in respect of the matters specified in sub-section (2) has been subscribed, and the sum of at least five per cent. thereof has been paid to or received in cash by the company.

(2) The matters for which provision for the raising of a minimum amount of share capital must be made by the directors are the following, namely :—

- (a) the purchase price of any property purchased or to be purchased which is to be defrayed in whole or in part out of the proceeds of the issue ;
- (b) any preliminary expenses payable by the company and any commission so payable to any person in consideration of his agreeing to subscribe for or of his procuring or agreeing to procure subscriptions for any shares in the company ;
- (c) the repayment of any moneys borrowed by the company in respect of any of the foregoing matters, and
- (d) working capital.

(2A) The amount referred to in sub-section (1) as the amount stated in the prospectus shall be reckoned exclusively of any amount payable otherwise than in cash and is in this Act referred to as the minimum subscription.

(2B) All moneys received from applicants for shares shall be deposited and kept in a scheduled bank as defined in the Reserve Bank of India Act, 1934, until returned in accordance with the provisions of sub-section (4) or until the certificate to commence business is obtained under section 103.

¹ Sub-sections (1) to (2C) were subs. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 55, for original sub-sections (1) and (2).

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(2C) In the event of any contravention of the provisions of sub-section (2B) every promoter, director or other person knowingly responsible for such contravention shall be liable to a fine not exceeding five hundred rupees.]

(3) The amount payable on application on each share shall not be less than five per cent. of the nominal amount of the share.

(4) If the conditions aforesaid have not been complied with on the expiration of one hundred and ¹[eighty] days after the first issue of the prospectus, all money received from applicants for shares shall be forthwith repaid to them without interest, and, if any such money is not so repaid within one hundred and ²[ninety] days after the issue of the prospectus, the directors of the company shall be jointly and severally liable to repay that money with interest at the rate of seven per cent. per annum from the expiration of the one hundred and ³[ninetieth] day: Provided that a director shall not be liable if he proves that the loss of the money was not due to any misconduct or negligence on his part.

(5) Any condition requiring or binding any applicant for shares to waive compliance with any requirement of this section shall be void.

(6) This section, except sub-section (3) thereof, shall not apply to any allotment of shares subsequent to the first allotment of shares offered to the public for subscription.

(7) In the case of the first allotment of share capital payable in cash of a company which does not issue any invitation to the public to subscribe for its shares, no allotment shall be made unless the minimum subscription (that is to say)—

(a) the amount (if any) fixed by the memorandum or articles and named in the statement in lieu of prospectus as the minimum subscription upon which the directors may proceed to allotment; or

(b) if no amount is so fixed and named, the whole amount of the share capital other than that issued or agreed to be issued as fully or partly paid up otherwise than in cash;

has been subscribed and an amount not less than five per cent. of the nominal amount of each share payable in cash has been paid to and received by the company.

(8) Sub-section (7) shall not apply to a private company or to a company which has allotted any shares or debentures before the ⁴commencement of this Act.

102. (1) An allotment made by a company to an applicant in contravention of the provisions of section 101 shall be voidable at the instance of the applicant within one month after the holding of the statutory meeting

Effect of
irregular
allotment.

¹ Subs. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 55, for "twenty".

² Subs. by s. 55, *ibid.*, for "thirty".

³ Subs. by s. 55, *ibid.*, for "thirtieth".

⁴ *I.e.*, the 1st April, 1914, *see* s. 1 (2), *supra*.

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of the company and not later ¹[or in any case where the company is not required to hold a statutory meeting or where the allotment is made after the holding of the statutory meeting within one month after the date of the allotment and not later], and shall be so voidable notwithstanding that the company is in course of being wound up.

(2) If any director of a company knowingly contravenes or permits or authorises the contravention of any of the provisions of section 101 with respect to allotment, he shall be liable to compensate the company and the allottee respectively for any loss, damages or costs which the company or the allottee may have sustained or incurred thereby: Provided that proceedings to recover any such loss, damages or costs shall not be commenced after the expiration of two years from the date of the allotment.

103. (1) A company shall not commence any business or exercise any borrowing powers unless—

Restrictions
on com-
mencement
of business.

- (a) shares held subject to the payment of the whole amount thereof in cash have been allotted to an amount not less in the whole than the minimum subscription ; and
- (b) every director of the company has paid to the company on each of the shares taken or contracted to be taken by him, and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares offered for public subscription or, in the case of a company which does not issue a prospectus inviting the public to subscribe for its shares, on the shares payable in cash ; and
- (c) there has been filed with the registrar a duly verified declaration by the secretary or one of the directors in the prescribed form, that the aforesaid conditions have been complied with ; and
- (d) in the case of a company which does not issue a prospectus inviting the public to subscribe for its shares, there has been filed with the register a statement in lieu of prospectus.

(2) The registrar shall, on the filing of a duly verified declaration, in accordance with the provisions of this section certify that the company is entitled to commence business, and that certificate shall be conclusive evidence that the company is so entitled :

Provided that, in the case of a company which does not issue a prospectus inviting the public to subscribe for its shares, the registrar shall not give such a certificate unless a statement in lieu of prospectus has been filed with him.

(3) Any contract made by a company before the date at which it is entitled to commence business shall be provisional only, and shall not be binding on the company until that date, and on that date it shall become binding.

¹ Ins. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 56.

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(4) Nothing in this section shall prevent the simultaneous offer for subscription or allotment of any shares and debentures or the receipt of any money payable on application for debentures.

(5) If any company commences business or exercises borrowing powers in contravention of this section, every person who is responsible for the contravention shall, without prejudice to any other liability, be liable to a fine not exceeding five hundred rupees for every day during which the contravention continues.

(6) Nothing in this section shall apply to a private company, or to a company registered before the commencement of this Act which does not issue a prospectus inviting the public to subscribe for its shares or, in so far as its provisions relate to shares, to a company limited by guarantee and not having a share capital.

Return as to
allotments.

104. (1) Whenever a company having a share capital makes any allotment of its shares, the company shall, within one month thereafter,—

(a) file with the registrar a return of the allotments, stating the number and nominal amount of the shares comprised in the allotment, the names, addresses and descriptions of the allottees, and the amount (if any) paid or due and payable on each share ; and

(b) in the case of shares allotted as fully or partly paid up otherwise than in cash, produce for the inspection and examination of the registrar a contract in writing constituting the title of the allottee to the allotment together with any contract of sale, or for services or other consideration in respect of which that allotment was made, such contracts being duly stamped, and file with the registrar copies verified in the prescribed manner of all such contracts and a return stating the number and nominal amount of shares so allotted, the extent to which they are to be treated as paid up, and the consideration for which they have been allotted.

(2) Where such a contract as above mentioned is not reduced to writing, the company shall, within one month after the allotment, file with the registrar the prescribed particulars of the contract stamped with the same stamp duty as would have been payable if the contract had been reduced to writing, and these particulars shall be deemed to be an instrument within the meaning of the Indian Stamp Act, 1899, and the registrar may, as a condition of filing the particulars, require that the duty payable thereon be adjudicated under section 31 of that Act.

II of 1899.

(3) If default is made in complying with the requirements of this section, every officer of the company who is knowingly a party to the default shall be liable to a fine not exceeding five hundred rupees for every day during which the default continues :

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Provided that, in case of default in filing with the registrar within one month after the allotment any document required to be filed by this section, the company, or any person liable for the default, may apply to the Court for relief, and the Court, if satisfied that the omission to file the document was accidental or due to inadvertence or that on other grounds it is just and equitable to grant relief, may make an order extending the time for the filing of the document for such a period as the Court may think proper.

¹[(4) Nothing in this section shall apply to the issue and allotment by a company of shares which under the provisions of its articles were forfeited for non-payment of calls.]

Commissions and Discounts.

105. (1) It shall be lawful for a company to pay a commission to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, if the payment of the commission is authorised by the articles and the commission paid or agreed to be paid does not exceed the amount or rate so authorised and if the amount or rate per cent. of the commission paid or agreed to be paid is—

Power to pay certain commissions and prohibition of payment of all other commissions, discounts, etc.

- (a) in the case of shares offered to the public for subscription, disclosed in the prospectus ; or
- (b) in the case of shares not offered to the public for subscription, disclosed in the statement in lieu of prospectus, or in a statement in the prescribed form signed in like manner as a statement in lieu of prospectus and filed with the registrar and, where a circular or notice, not being a prospectus inviting subscription for the shares is issued, also disclosed in that circular or notice.

(2) Save as aforesaid ²[and save as provided in section 105A], no company shall apply any of its shares or capital money either directly or indirectly in payment of any commission, discount or allowance, to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, whether the shares or money be so applied by being added to the purchase-money of any property acquired by the company or to the contract price of any work to be executed for the company, or the money be paid out of the nominal purchase-money or contract price, or otherwise.

(3) Nothing in this section shall affect the power of any company to pay such brokerage as it has heretofore been lawful for a company to pay, and

¹ Ins. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 57.

² Ins. by s. 58, *ibid.*

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a vendor to, promoter of, or other person who receives payment in money or shares from, a company shall have and shall be deemed always to have had power to apply any part of the money or shares so received in payment of any commission, the payment of which, if made directly by the company, would have been legal under this section.

Power to
issue
shares at a
discount.

¹[105A. (1) Subject to the provisions of this section, it shall be lawful for a company to issue at a discount shares in the company of a class already issued :

Provided that—

- (a) the issue of the shares at a discount must be authorised by resolution passed in general meeting of the company and must be sanctioned by the Court ;
- (b) the resolution must specify the maximum rate of discount (not exceeding ten per cent. in any case) at which shares are to be issued ;
- (c) not less than one year must at the date of issue have elapsed since the date on which the company was entitled to commence business ;
- (d) the shares to be issued at a discount must be issued within six months after the date on which the issue is sanctioned by the Court or within such extended time as the Court may allow.

(2) Every prospectus relating to the issue of the shares and every balance-sheet issued by the company subsequently to the issue of the shares must contain particulars of the discount allowed on the issue of the shares or of so much of that discount as has not been written off at the date of the issue of the document in question.

(3) If default is made in complying with sub-section (2), the company and every officer of the company who is in default shall be liable to a fine not exceeding fifty rupees.]

Issue of
redeemable
preference
shares.

¹[105B. (1) Subject to the provisions of this section, a company limited by shares may, if so authorised by its articles, issue preference shares which are, or at the option of the company are to be, liable to be redeemed :

Provided that—

- (a) no such shares shall be redeemed except out of profits of the company which would otherwise be available for dividend or out of the proceeds of a fresh issue of shares made for the purposes of the redemption or out of sale proceeds of any property of the company ;
- (b) no such shares shall be redeemed unless they are fully paid ;

¹ Ins. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 59.

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- (c) where any such shares are redeemed otherwise than out of the proceeds of a fresh issue, there shall out of profits which would otherwise have been available for dividend be transferred to a reserve fund, to be called "the capital redemption reserve fund", a sum equal to the amount applied in redeeming the shares, and the provisions of this Act relating to the reduction of the share capital of a company shall, except as provided in this section, apply as if the capital redemption reserve fund were paid-up share capital of the company ;
- (d) where any such shares are redeemed out of the proceeds of a fresh issue, the premium, if any, payable on redemption must have been provided for out of the profits of the company before the shares are redeemed.

(2) There shall be included in every balance-sheet of a company which has issued redeemable preference shares a statement specifying what part of the issued capital of the company consists of such shares and the date on or before which those shares are, or are to be, liable to be redeemed or, where no definite date is fixed for redemption, the period of notice to be given for redemption.

If a company fails to comply with the provisions of this sub-section, the company and every officer of the company who is in default shall be liable to a fine not exceeding one thousand rupees.

(3) Subject to the provisions of this section, the redemption of preference shares thereunder may be effected on such terms and in such manner as may be provided by the articles of the company.

(4) Where in pursuance of this section a company has redeemed or is about to redeem any preference shares, it shall have power to issue shares up to the nominal amount of the shares redeemed or to be redeemed as if those shares had never been issued, and accordingly the share capital of the company shall not for the purpose of calculating the fees payable under section 249 be deemed to be increased by the issue of shares in pursuance of this sub-section :

Provided that, where new shares are issued before the redemption of the old shares, the new shares shall not, so far as relates to stamp duty, be deemed to have been issued in pursuance of this sub-section unless the old shares are redeemed within one month after the issue of the new shares.

(5) Where new shares have been issued in pursuance of the last foregoing sub-section, the capital redemption reserve fund may, notwithstanding anything in this section, be applied by the company, up to an amount equal to the nominal amount of the shares so issued, in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares.]

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Further issue
of capital.

¹[105C. Where the directors decide to increase the capital of the company by the issue of further shares such shares shall be offered to the members in proportion to the existing shares held by each member (irrespective of class) and such offer shall be made by notice specifying the number of shares to which the member is entitled, and limiting a time within which the offer, if not accepted, will be deemed to be declined; and after the expiration of such time, or on receipt of an intimation from the member to whom such notice is given that he declines to accept the shares offered, the directors may dispose of the same in such manner as they think most beneficial to the company.]

Statement in
balance-sheet
as to com-
missions and
discounts.

106. Where a company has paid any sums by way of commission in respect of any shares or debentures or allowed any sums by way of discount in respect of any debentures, the total amount so paid or allowed or so much thereof as has not been written off, shall be stated in every balance-sheet of the company until the whole amount thereof has been written off.

Payment of Interest out of Capital.

Power of
company to
pay interest
out of
capital in
certain cases.

107. Where any shares of a company are issued for the purpose of raising money to defray the expenses of the construction of any works or buildings or the provision of any plant which cannot be made profitable for a lengthened period, the company may pay interest on so much of that share capital as is for the time being paid up for the period and subject to the conditions and restrictions in this section mentioned, and may charge the same to capital as part of the cost of construction of the work or building, or the provision of plant :

Provided that—

- (1) no such payment shall be made unless the same is authorised by the articles or by special resolution ;
- (2) no such payment, whether authorised by the articles or by special resolution, shall be made without the previous sanction of the ²[Central Government], which sanction shall be conclusive evidence for the purposes of this section that the shares of the company, in respect of which such sanction is given, have been issued for a purpose specified in this section ;
- (3) before sanctioning any such payment, the ²[Central Government] may, at the expense of the company, appoint a person to inquire and report to ³such ²[Central Government] as to the circumstances of the case, and may, before making the appointment, require the company to give security for the payment of the costs of the inquiry ;

¹ Ins. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 59.

² Subs. by the A. O. for "L. G."

³ *Sic.* should be "the".

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- (4) the payment shall be made only for such period as may be determined by the ¹[Central Government]; and such period shall in no case extend beyond the close of the half-year next after the half-year during which the works or buildings have been actually completed or the plant provided ;
- (5) the rate of interest shall in no case exceed four per cent. per annum or such lower rate as the ²[Central Government], may, by notification in the ³[Official Gazette], prescribe ;
- (6) the payment of the interest shall not operate as a reduction of the amount paid up on the shares in respect of which it is paid ;
- (7) the accounts of the company shall show the share capital on which, and the rate at which, interest has been paid out of capital during the period to which the accounts relate ;
- (8) nothing in this section shall affect any company to which the Indian Railway Companies Act, 1895, or the Indian Tramways Act, 1902, applies.

X of 1895.
IV of 1902.

Certificates of Shares, etc.

108. (1) Every company shall, within three months after the allotment of any of its shares, debentures or debenture stock, and within three months after the registration of the transfer of any such shares, debentures or debenture stock, complete and have ready for delivery the certificates of all shares, the debentures, and the certificates of all debenture stock allotted or transferred, unless the conditions of issue of the shares, debentures or debenture stock otherwise provide.

Limitation of
time for issue
of certificates.

(2) If default is made in complying with the requirements of this section, the company, and every officer of the company who is knowingly a party to the default, shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.

Information as to Mortgages, Charges, etc.

109. ⁴[(1)] Every mortgage or charge created after the commencement of this Act by a company and being either—

- (a) a mortgage or charge for the purpose of securing any issue of debentures ; or
- (b) a mortgage or charge on uncalled share capital of the company ;
or
- (c) a mortgage or charge on any immoveable property wherever situate, or any interest therein ; or

Certain
mortgages
and charges
to be void
if not
registered.

¹ Subs. by the A. O. for " L. G. "

² Subs. by the A. O. for " G. G. in C. "

³ Subs. by the A. O. for " Gazette of India ".

⁴ The original s. 109 was re-numbered as sub-section (1) of that section by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 60.

(Part IV.—Management and Administration.)

(d) a mortgage or charge on any book debts of the company ; or

¹[(e) a mortgage or a charge, not being a pledge on any moveable property of the company except stock-in-trade ; or]

²[(f)] a floating charge on the undertaking or property of the company ;

shall, so far as any security on the company's property or undertaking is thereby conferred, be void against the liquidator and any creditor of the company, unless the prescribed particulars of the mortgage or charge, together with the instrument (if any) by which the mortgage or charge is created or evidenced, or a copy thereof verified in the prescribed manner are filed with the registrar for registration in manner required by this Act within twenty-one days after the date of its creation, but without prejudice to any contract or obligation for repayment of the money thereby secured, and when a mortgage or charge becomes void under this section, the money secured thereby shall immediately become payable :

Provided that—

- (i) in the case of a mortgage or charge created out of British India comprising solely property situate outside British India, twenty-one days after the date on which the instrument or copy could, in due course of post, and if despatched with due diligence, have been received in British India shall be substituted for twenty-one days after the date of the creation of the mortgage or charge, as the time within which the particulars and instrument or copy are to be filed with the registrar ; and
- (ii) where the mortgage or charge is created in British India but comprises property outside British India, the instrument creating or purporting to create the mortgage or charge or a copy thereof verified in the prescribed manner may be filed for registration notwithstanding that further proceedings may be necessary to make the mortgage or charge valid or effectual according to the law of the country in which the property is situate ; and
- (iii) where a negotiable instrument has been given to secure the payment of any book debts of a company, the deposit of the instrument for the purpose of securing an advance to the company shall not for the purposes of this section be treated as a mortgage or charge on those book debts ; and
- (iv) the holding of debentures entitling the holder to a charge on immoveable property shall not be deemed to be an interest in immoveable property.

¹ Ins. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 60.

² The original cl. (e) was re-lettered (f), *ibid.*

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¹[(2) Where any mortgage or charge on any property of a company required to be registered under this section has been so registered, any person acquiring such property or any part thereof, or any share or interest therein, shall be deemed to have notice of the said mortgage or charge as from the date of such registration.]

²[In this section " British India " does not include Burma or Aden, whatever the date of the mortgage or charge in question.]

XXII of
1936.

³[**109A.** (1) Where after the commencement of the Indian Companies (Amendment) Act, 1936, a company registered in British India acquires any property which is subject to a charge of any such kind as would, if it had been created by the company after the acquisition of the property, have been required to be registered under this Part, the company shall cause the prescribed particulars of the charge, together with a copy (certified in the prescribed manner to be a correct copy) of the instrument, if any, by which the charge was created or is evidenced, to be delivered to the registrar for registration in manner required by this Act within twenty-one days after the date on which the acquisition is completed :

Registration
of charges on
properties
acquired
subject to
charge.

Provided that, if the property is situate and the charge was created outside British India, twenty-one days after the date on which the copy of the instrument could in due course of post, and if despatched with due diligence, have been received in British India shall be substituted for twenty-one days after the completion of the acquisition as the time within which the particulars and the copy of the instrument are to be delivered to the registrar.

(2) If default is made in complying with this section, the company and every officer of the company who is knowingly and wilfully in default shall be liable to a fine of five hundred rupees.]

110. Where a series of debentures containing, or giving by reference to any other instrument, any charge to the benefit of which the debenture-holders of that series are entitled *pari passu* is created by a company, it shall be sufficient for the purposes of section 109 if there are filed with the registrar within twenty-one days after the execution of the deed containing the charge or, if there is no such deed, after the execution of any debentures of the series, the following particulars :—

Particulars
in case
series of
debentures
entitling
holders *pari
passu*.

- (a) the total amount secured by the whole series ; and
- (b) the dates of the resolution authorising the issue of the series and the date of the covering deed (if any) by which the security is created or defined ; and
- (c) a general description of the property charged ; and
- (d) the names of the trustees (if any) for the debenture-holders ;

¹ Ins. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 60.

² Ins. by the A. O.

³ Ins. by Act 22 of 1936, s. 61.

⁴ The Act came into force on the 15th January, 1937.

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together with the deed or a copy thereof verified in the prescribed manner containing the charge, or if there is no such deed, one of the debentures of the series, and the registrar shall, on payment of the prescribed fee, enter those particulars in the register :

Provided that, where more than one issue is made of debentures in the series, there shall be filed with the registrar for entry in the register particulars of the date and amount of each issue, but an omission to do this shall not affect the validity of the debentures issued.

Particulars in
case of
commission,
etc., on
debentures.

111. Where any commission, allowance or discount has been paid or made either directly or indirectly by the company to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any debentures of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any such debentures, the particulars required to be filed for registration under sections 109 and 110 shall include particulars as to the amount or rate per cent. of the commission, discount or allowance so paid or made, but an omission to do this shall not affect the validity of the debentures issued :

Provided that the deposit of any debentures as security for any debt of the company shall not for the purposes of this provision be treated as the issue of the debentures at a discount.

Register of
mortgages
and charges.

112. (1) The registrar shall keep, with respect to each company, a register in the prescribed form of all mortgages and charges created by the company after the commencement of this Act and requiring registration under section 109, and shall, on payment of the prescribed fee, enter in the register, with respect to every such mortgage, or charge, the date of creation, the amount secured by it, short particulars of the property mortgaged or charged, and the names of the mortgagees or persons entitled to the charge.

(2) After making the entry required by subsection (1), the registrar shall return the instrument (if any) or the verified copy thereof, as the case may be, filed in accordance with the provisions of section 109 or section 110 to the person filing the same.

(3) The register kept in pursuance of this section shall be open to inspection by any person on payment of the prescribed fee, not exceeding one rupee for each inspection.

Index to
register of
mortgages
and charges.

113. The registrar shall keep a chronological index, in the prescribed form and with the prescribed particulars, of the mortgages or charges registered with him under this Act.

Certificate of
registration.

114. The registrar shall give a certificate under his hand of the registration of any mortgage or charge registered in pursuance of section 109, stating the amount thereby secured, and the certificate shall be conclusive evidence that the requirements of sections 109 to 112 as to registration have been complied with.

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115. The company shall cause a copy of every certificate of registration, given under section 114, to be endorsed on every debenture or certificate of debenture stock which is issued by the company, and the payment of which is secured by the mortgage or charge so registered :

Endorsement of certificate of registration on debenture or certificate of debenture stock.

Provided that nothing in this section shall be construed as requiring a company to cause a certificate of registration of any mortgage or charge so given to be endorsed on any debenture or certificate of debenture stock which has been issued by the company before the mortgage or charge was created.

116. (1) It shall be the duty of the company to file with the registrar for registration the prescribed particulars of every mortgage or charge created by the company and of the issues of debentures of a series, requiring registration under section 109, but registration of any such mortgage or charge may be effected on the application of any person interested therein.

Duty of company and right of interested party as regards registration.

(2) Where the registration is effected on the application of some person other than the company, that person shall be entitled to recover from the company the amount of any fees properly paid by him to the registrar on the registration.

¶ (3) Whenever the terms or conditions or extent or operation of any mortgage or charge registered under this section are modified, it shall be the duty of the company to send to the registrar the particulars of such modification, and the provisions of this section as to registration of mortgage or a charge shall apply to such modification of the mortgage or charge as aforesaid.]

117. Every company shall cause a copy of every instrument creating any mortgage or charge requiring registration under section 109 to be kept at the registered office of the company : Provided that, in the case of a series of uniform debentures, a copy of one such debenture shall be sufficient.

Copy of instrument creating mortgage or charge to be kept at registered office.

118. (1) If any person obtains an order for the appointment of a receiver of the property of a company, or appoints such a receiver under any powers contained in any instrument, he shall, within fifteen days from the date of the order or of the appointment under the powers contained in the instrument, file notice of the fact with the registrar, and the registrar shall, on payment of the prescribed fee, enter the fact in the register of mortgages and charges.

Registration of appointment of receiver.

(2) If any person makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.

119. (1) Every receiver of the property of a company who has been appointed under the powers contained in any instrument, and who has taken possession, shall once in every half-year while he remains in possession, and

Filing of accounts of receivers.

¹ Ins. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 62.

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also on ceasing to act as receiver, file with the registrar an abstract in the prescribed form of his receipts and payments during the period to which the abstract relates, and shall, also, on ceasing to act as receiver, file with the registrar notice to that effect, and the registrar, shall enter the notice in the register of mortgages and charges.

¹[(2) Where a receiver of the property of a company has been appointed, every invoice, order for goods, or business letter issued by or on behalf of the company, or the receiver of the company, being a document on or in which the name of the company appears, shall contain a statement that a receiver has been appointed.]

(3) If default is made in complying with the requirements of this section, the company and every director, manager, managing agent, secretary or other officer of the company and every receiver who knowingly and wilfully authorises or permits the default, shall be liable to a fine not exceeding two hundred rupees.]

Rectification
of register of
mortgages.

120. ²[(1)] The Court, on being satisfied that the omission to register a mortgage or charge within the time required by section 109, or that the omission or mis-statement of any particular with respect to any such mortgage or charge, ³[or the omission to give intimation to the registrar of the payment or satisfaction of a debt for which a charge or mortgage was created] was accidental, or due to inadvertence or to some other sufficient cause, or is not of a nature to prejudice the position of creditors or share-holders of the company, or that on other grounds it is just and equitable to grant relief, may, on the application of the company or any person interested and on such terms and conditions as seem to the Court just and expedient, order that the time for registration be extended, or, as the case may be, that the omission or mis-statement be rectified, and may make such order as to the costs of the application as it thinks fit.

³[(2) Where the Court extends the time for the registration of a mortgage or charge, the order shall not prejudice any rights acquired in respect of the property concerned prior to the time when the mortgage or charge is actually registered.]

Registration
or satisfaction
of mortgages
and charges.

⁴[121. (1) It shall be the duty of the company to give intimation to the registrar of the payment or satisfaction of any charge or mortgage created by the company and requiring registration under section 109 within twenty-one days from the date of the payment or satisfaction thereof.

(2) The registrar shall on receipt of such intimation cause a notice to be sent to the mortgagee calling upon him to show cause, within a time (not

¹ Subs. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 63, for the original sub-section.

² The original s. 120 was re-numbered as sub-section (1) of that section by s. 64, *ibid.*

³ Ins. by s. 64, *ibid.*

⁴ Subs. by s. 65, *ibid.*, for the original section.

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exceeding fourteen days) to be fixed by such notice, why the payment or satisfaction of the charge or mortgage should not be recorded.

(3) The registrar shall, if no cause is shown, order that a memorandum of satisfaction be entered on the register and shall if required furnish the company with a copy thereof.

(4) Where cause is shown, the registrar shall record a note to that effect in the register, and shall inform the company that he has done so.]

122. (1) If any company makes default in filing with the registrar for Penalties. registration the particulars—

(a) of any mortgage or charge created by the company ; or

¹[(b) of the payment or satisfaction of a debt in respect of which a mortgage or charge has been registered under section 109 or section 109A ; or]

¹[(c)] of the issues of debentures of a series,

requiring registration with the registrar under the foregoing provisions of this Act, then, unless the registration has been effected on the application of some other person, the company, and every officer of the company or other person who is knowingly a party to the default, shall on conviction be liable to a fine not exceeding five hundred rupees for every day during which the default continues.

(2) Subject as aforesaid, if any company makes default in complying with any of the requirements of this Act as to the registration with the registrar of any mortgage or charge created by the company, the company, and every officer of the company, who knowingly and wilfully authorises or permits the default shall, without prejudice to any other liability, be liable on conviction to a fine not exceeding one thousand rupees.

(3) If any person knowingly and wilfully authorises or permits the delivery of any debenture or certificate of debenture stock requiring registration with the registrar under the foregoing provisions of this Act without a copy of the certificate of registration being endorsed upon it, he shall, without prejudice to any other liability, be liable on conviction to a fine not exceeding one thousand rupees.

123. (1) Every ^{2*} company shall keep a register of mortgages and enter therein all mortgages and charges specifically affecting property of the company ³[and all floating charges on the undertaking or on any property of the company], giving in each case a short description of the property mortgaged or charged, the amount of the mortgage or charge and (except in the case of securities to bearer) the names of the mortgagees or persons entitled thereto.

Company's
register of
mortgages.

(2) If any director, manager or other officer of the company knowingly and wilfully authorises or permits the omission of any entry required to be

¹ Clause (b) was ins. and the original clause (b) re-lettered (c) by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 66.

² The word " limited " rep. by s. 67, *ibid.*

³ Ins. by s. 67, *ibid.*

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made in pursuance of this section, he shall be liable to a fine not exceeding five hundred rupees.

Right to inspect copies of instruments creating mortgages and charges and company's register of mortgages.

124. (1) The copies kept at the registered office of the company in pursuance of section 117 of instruments creating any mortgage or charge requiring registration under this Act with the registrar, and the register of mortgages kept in pursuance of section 123, shall be open at all reasonable times to the inspection of any creditor or member of the company without fee, and the register of mortgages shall also be open to the inspection of any other person on payment of such fee, not exceeding one rupee for each inspection, as the company may prescribe.

(2) If inspection of the said copies or register is refused, the company shall be liable to a fine not exceeding fifty rupees and a further fine not exceeding twenty rupees for every day during which the refusal continues, and every officer of the company who knowingly authorises or permits the refusal shall incur the like penalty, and in addition to the above penalty, the Court may by order compel an immediate inspection of the copies or register.

Right to inspect the register of debenture-holders and to have copies of trust-deed.

125. (1) Every register of holders of debentures of a company shall, except when closed in accordance with the articles during such period or periods (not exceeding in the whole thirty days in any year) as may be specified in the articles, be open to the inspection of the registered holder of any such debentures, and of any holder of shares in the company, but subject to such reasonable restrictions as the company may in general meeting impose, so that at least two hours in each day are appointed for inspection, and every such holder may require a copy of the register or any part thereof on payment of six annas for every one hundred words or fractional part thereof required to be copied.

(2) A copy of any trust-deed for securing any issue of debentures shall be forwarded to every holder of any such debentures at his request on payment in the case of a printed trust-deed of the sum of one rupee or such less sum as may be prescribed by the company, or, where the trust-deed has not been printed, on payment of six annas for every one hundred words or fractional part thereof required to be copied.

(3) If inspection is refused, or a copy is refused or not forwarded, the company shall be liable to a fine not exceeding fifty rupees, and to a further fine not exceeding twenty rupees for every day during which the refusal continues, and every officer of the company who knowingly authorises or permits the refusal shall incur the like penalty, and the Court may by order compel an immediate inspection of the register.

Debentures and Floating Charges.

Perpetual debentures.

126. A condition contained in any debentures or in any deed for securing any debentures, whether issued or executed before or after the passing of this Act, shall not be invalid by reason only that thereby the debentures

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are made irredeemable or redeemable only on the happening of a contingency, however, remote, or on the expiration of a period however long.

127. (1) Where either before or after the commencement of this Act a company has redeemed any debentures previously issued, the company, unless the articles or the conditions of issue expressly otherwise provide, or unless the debentures have been redeemed in pursuance of any obligation on the company so to do (not being an obligation enforceable only by the person to whom the redeemed debentures were issued or his assigns), shall have power, and shall be deemed always to have had power, to keep the debentures alive for the purposes of re-issue, and where a company has purported to exercise such a power the company shall have power, and shall be deemed always to have had power, to re-issue the debentures either by re-issuing the same debentures or by issuing other debentures in their place, and upon such re-issue the person entitled to the debentures shall have, and shall be deemed always to have had, the same rights and priorities as if the debentures had not previously been issued.

Power to
re-issue
redeemed
debentures in
certain cases.

(2) Where with the object of keeping debentures alive for the purpose of re-issue they have, either before or after the commencement of this Act, been transferred to a nominee of the company, a transfer from that nominee shall be deemed to be a re-issue for the purposes of this section.

(3) Where a company has, either before or after the commencement of this Act, deposited any of its debentures to secure advances from time to time on current account or otherwise, the debentures shall not be deemed to have been redeemed by reason only of the account of the company having ceased to be in debit whilst the debentures remained so deposited.

(4) The re-issue of a debenture or the issue of another debenture in its place under the power by this section given to, or deemed to have been possessed by, a company, whether the re-issue or issue was made before or after the commencement of this Act, shall be treated as the issue of a new debenture for the purposes of stamp-duty, but it shall not be so treated for the purposes of any provision limiting the amount or number of debentures to be issued :

Provided that any person lending money on the security of a debenture re-issued under this section which appears to be duly stamped may give the debenture in evidence in any proceedings for enforcing his security without payment of the stamp-duty or any penalty in respect thereof, unless he had notice or, but for his negligence, might have discovered, that the debenture was not duly stamped, but in any such case the company shall be liable to pay the proper stamp-duty and penalty.

(5) Nothing in this section shall prejudice—

- (a) the operation of any decree or order of a Court of competent jurisdiction pronounced or made before the twenty-fifth day of February, 1910, as between the parties to the proceedings in which the decree or order was made, and any appeal from any

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such decree or order shall be decided as if this Act had not been passed ; or

- (b) any power to issue debentures in the place of any debentures paid off or otherwise satisfied or extinguished, reserved to a company by its debentures or the securities for the same.

Specific performance of contract to subscribe for debentures. Payments of certain debts out of assets subject to floating charge in priority to claims under the charge.

128. A contract with a company to take up and pay for any debentures of the company may be enforced by a decree for specific performance.

129. (1) Where either a receiver is appointed on behalf of the holders of any debentures of a company secured by a floating charge, or possession is taken by or on behalf of those debenture-holders of any property comprised in or subject to the charge, then, if the company is not at the time in course of being wound up, the debts which in every winding up are under the provisions of Part V relating to preferential payments to be paid in priority to all other debts, shall be paid forthwith out of any assets coming to the hands of the receiver or other person taking possession as aforesaid in priority to any claim for principal or interest in respect of the debentures.

(2) The periods of time mentioned in the said provisions of Part V shall be reckoned from the date of the appointment of the receiver or of possession being taken as aforesaid, as the case may be.

(3) Any payments made under this section shall be recouped, as far as may be, out of the assets of the company available for payment of general creditors.

Statements, Books and Accounts.

Books to be kept by company and penalty for not keeping proper books.

¹**130.** (1) Every company shall cause to be kept proper books of account with respect to—

- (a) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place ;
 (b) all sales and purchases of goods by the company ;
 (c) the assets and liabilities of the company.

(2) The books of account shall be kept at the registered office of the company or at such other place as the directors think fit, and shall be open to inspection by the directors during business hours.

(3) In the case of a company managed by a managing agent the managing agent, or where the managing agent is a firm or company, the partner or director of such firm or company and in any other case the director or directors who have knowingly by their act or omission been the cause of any default by the company in complying with the requirements of this section,

¹ Subs. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 68, for the original section.

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shall in respect of such offence be liable to a fine not exceeding one thousand rupees.]

131. ¹[(1) The directors of every company shall at some date not later than eighteen months after the incorporation of the company and subsequently once at least in every calendar year lay before the company in general meeting a balance-sheet and profit and loss account or in the case of a company not trading for profit an income and expenditure account for the period, in the case of the first account since the incorporation of the company and in any other case since the preceding account, made up to a date not earlier than the date of the meeting by more than nine months or in the case of a company carrying on business or having interests outside British India by more than twelve months :

Annual
balance-
sheet.

Provided that the registrar may for any special reason extend the period by a period not exceeding three months.]

(2) The balance-sheet ²[and the profit and loss account or income and expenditure account] shall be audited by the auditor of the company as hereinafter provided, and the auditor's report shall be attached thereto, or there shall be inserted at the foot thereof a reference to the report, and the report shall be read before the company in general meeting and shall be open to inspection by any member of the company.

(3) Every company other than a private company shall send a copy of ³[such balance-sheet and profit and loss account or income and expenditure account so audited together with a copy of the auditors' report] to the registered address of every member of the company at least ⁴[fourteen days] before the meeting at which it is to be laid before the members of the company, and shall deposit a copy at the registered office of the company for the inspection of the members of the company during a period of at least ⁴[fourteen days] before that meeting.

5* * * * *

⁶[131A. (1) The directors shall make out and attach to every balance-sheet a report with respect to the state of the company's affairs, the amount, if any, which they recommend should be paid by way of dividend and the amount, if any, which they propose to carry to the Reserve Fund, General Reserve or Reserve Account shown specifically on the balance-sheet or to a Reserve Fund, General Reserve or Reserve Account to be shown specifically in a subsequent balance-sheet.

Directors'
Report.

(2) The report referred to in sub-section (1) may be signed by the chairman of the directors on behalf of the directors if authorised in that behalf by the directors.

¹ Subs. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 69, for the original sub-section.

² Ins. by s. 69, *ibid.*

³ Subs. by s. 69, *ibid.*, for "such balance-sheet so audited".

⁴ Subs. by s. 69, *ibid.*, for "seven days".

⁵ Sub-section (4) rep. by s. 69, *ibid.*

⁶ Ins. by s. 70, *ibid.*

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(3) The provisions of sub-section (3) of section 130 shall apply to any person being a director who is knowingly and wilfully guilty of a default in complying with this section.]

Contents of
balance-sheet.

132. (1) The balance-sheet shall contain a summary of the property and assets and of the capital and liabilities of the company giving such particulars as will disclose the general nature of those liabilities and assets and how the value of the fixed assets has been arrived at.

(2) The balance-sheet shall be in the form marked F in the Third Schedule or as near thereto as circumstances admit.

¹[(3) The profit and loss account shall include particulars showing the total of the amount paid whether as fees, percentages or otherwise to the managing agent, if any, and the directors respectively as remuneration for their services and, where a special resolution passed by the members of the company so requires, to the manager, and the total of the amount written off for depreciation. If any director of the company is by virtue of the nomination, whether direct or indirect, of the company, a director of any other company, any remuneration or other emoluments received by him for his own use, whether as a director of, or otherwise in connection with the management of, that other company, shall be shown in a note at the foot of the account or in a statement attached thereto.]

Balance-sheet
to include
particulars
as to subsidiary
companies.

²[**132A.** (1) Where a company, in this Act referred to as the holding company, holds shares, either directly or through a nominee, in a subsidiary company or in two or more subsidiary companies there shall be annexed to the balance-sheet of the holding company the last audited balance-sheet, profit and loss account and auditors' report of the subsidiary company or companies, and a statement signed by the persons by whom, in pursuance of section 133, the balance-sheet of the holding company is signed stating how the profits and losses of the subsidiary company, or, where there are two or more subsidiary companies, the aggregate profits and losses of those companies, have been dealt with in or for the purposes of the accounts of the holding company, and in particular how and to what extent—

(a) provision has been made for the losses of a subsidiary company either in the accounts of that company or of the holding company or of both, and

(b) losses of a subsidiary company have been taken into account by the directors of the holding company in arriving at the profits and losses of the company as disclosed in its accounts :

Provided that it shall not be necessary to specify in any such statement the actual amount of the profits or losses of any subsidiary company or the actual amount of any part of any such profits or losses which has been dealt with in any particular manner :

¹ Ins. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 71.

² Ins. by s. 72, *ibid.*

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Provided further that for the purposes of this section an investment company, that is to say, a company whose principal business is the acquisition and holding of shares, stocks, debentures or other securities, shall not be deemed to be a holding company by reason only that part of its assets consists in 51 per cent. or more of the shares of another company.

(2) If, in the case of a subsidiary company, the auditors' report on the balance-sheet of the company does not state without qualification that the auditors have obtained all the information and explanations they have required and that the balance-sheet is properly drawn up so as to exhibit a true and correct view of the state of the company's affairs according to the best of their information and the explanations given to them and as shown by the books of the company, the statement, which is to be annexed as aforesaid to the balance-sheet of the holding company, shall contain particulars of the manner in which the report is qualified.

(3) For the purposes of this section the profits or losses of a subsidiary company mean the profits or losses shown in any accounts of the subsidiary company made up to a date within the period to which the accounts of the holding company relate, or, if there are no such accounts of the subsidiary company available at the time when the accounts of the holding company are made up, the profits or losses shown in the last previous accounts of the subsidiary company which became available within that period.

(4) If for any reason the directors of the holding company are unable to obtain such information as is necessary for the preparation of the statement aforesaid, the directors who sign the balance-sheet shall so report in writing and their report shall be annexed to the balance-sheet in lieu of the statement.

(5) The holding company may by a resolution authorise representatives named in the resolution to inspect the books of account kept in accordance with section 130 by any subsidiary company, and on such resolution being passed those books of account shall be open to inspection by those representatives at any time during business hours.

(6) The rights conferred by section 138 upon members of a company may be exercised in respect of any subsidiary company by members of the holding company as if they were members of that subsidiary company.]

133. (1) Save as provided by sub-section (2) the balance-sheet ¹[and profit and loss account or income and expenditure account] shall—

Authentica-
tion of
balance-
sheet.

- (i) in the case of a banking company, be signed by the manager ¹[or managing agent] (if any) and, where there are more than three directors of the company, by at least three of those directors and, where there are not more than three directors, by all the directors ;

¹ Ins. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 73.

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(ii) in the case of any other company, be signed by two directors or, when there are less than two directors, by the sole director and by the manager ¹[or managing agent] (if any) of the company.

(2) When the total number of directors of the company for the time being in British India is less than the number of directors whose signatures are required by sub-section (1), then the balance-sheet ¹[and profit and loss account or income and expenditure account] shall be signed by all the directors for the time being in British India, or, if there is only one director for the time being in British India, by such director, but in such a case there shall be subjoined to the balance-sheet ¹[and profit and loss account or income and expenditure account] a statement signed by such directors or director explaining the reason for non-compliance with the provisions of sub-section (1).

²[(3) If any default is made in laying before the company or in issuing a balance-sheet and profit and loss account or income and expenditure account as required by section 131 or if any balance-sheet and profit and loss account or income and expenditure account is issued, circulated or published which does not comply with the requirements laid down by and under section 131, section 132, section 132A and this section, the company and every officer of the company who is knowingly and wilfully a party to the default shall be punishable with fine which may extend to five hundred rupees.]

Copy of
balance-sheet
to be for-
warded to
the registrar.

134. (1) ³[After the balance-sheet and profit and loss account have] been laid before the company at the general meeting a copy ⁴[of the balance-sheet] signed by the manager or secretary of the company shall be filed with the registrar at the same time as the copy of the annual list of members and summary prepared in accordance with the requirements of section 32.

(2) If the general meeting before which a balance-sheet is laid does not adopt the balance-sheet, a statement of that fact and of the reasons therefor shall be annexed to the balance-sheet and to the copy thereof required to be filed with the registrar.

(3) This section shall not apply to a private company.

(4) If a company makes default in complying with the requirements of this section, the company and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty as is provided by section 32 for a default in complying with the provisions of that section.

Right of
member of
company to

135. Save as otherwise provided in this Act, any member of a company shall be entitled to be furnished with copies of the balance-sheet ⁵[and the

¹ Ins. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 73.

² Subs. by s. 73, *ibid.*, for the original sub-section.

³ Subs. by s. 74, *ibid.*, for " After the balance-sheet has ".

⁴ Subs. by s. 74, *ibid.*, for " thereof ".

⁵ Ins. by s. 75, *ibid.*

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profit and loss account or the income and expenditure account] and the auditor's report at a charge not exceeding six annas for every hundred words or fractional part thereof.

copies of the balance-sheet and the auditor's report.

Statement to be published by Banking and certain other Companies.

136. (1) Every company being a limited banking company or an insurance company or a deposit, provident or benefit society shall, before it commences business, and also on the first Monday in February and the first Monday in August in every year during which it carries on business, make a statement in the form marked G in the Third Schedule, or as near thereto as circumstances will admit.

Certain companies to publish statement in schedule.

(2) A copy of the statement ¹[together with a copy of the last audited balance-sheet laid before the members of the company] shall be displayed and, until the display of the next following statement, kept displayed in a conspicuous place in the registered office of the company, and in every branch office or place where the business of the company is carried on.

(3) Every member and every creditor of the company shall be entitled to a copy of the statement on payment of a sum not exceeding eight annas.

(4) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding fifty rupees for every day during which the default continues; and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

(5) This section shall not apply to a life assurance company or provident insurance society to which the provisions of the ²Indian Life Assurance Companies Act, 1912, or of the ²Provident Insurance Societies Act, 1912, as the case may be, as to the annual statements to be made by such company or society, apply with or without modifications, if the company or society complies with those provisions.

VI of 1912.
V of 1912.

Investigation by the Registrar.

137. (1) Where the registrar, on perusal of any document which a company is required to submit to him under the provisions of this Act, is of opinion that any information or explanation is necessary in order that such document may afford full particulars of the matter to which it purports to relate, he may, by a written order, call on the company submitting the document to furnish in writing such information or explanation within such time as he may specify in his order.

Power of registrar to call for information or explanation.

(2) On the receipt of an order under sub-section (1), it shall be the duty of all persons who are or have been officers of the company to furnish such information or explanation to the best of their power.

¹ Ins. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 76.

² These two Acts have been rep. by the Insurance Act, 1938 (4 of 1938), s. 106; cf. also s. 102B of that Act.

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(3) If any such person refuses or neglects to furnish any such information or explanation, he shall be liable to a fine not exceeding fifty rupees in respect of each offence ¹[, and the Court may on the application of the registrar and upon notice to the company make an order on the company for production of such documents as in its opinion may reasonably be required by the registrar for his investigation and allow the registrar inspection thereof on such terms and conditions as it thinks fit.]

(4) On receipt of such information or explanation the registrar may annex the same to the original document submitted to him ; and any additional document so annexed by the registrar shall be subject to the like provisions as to inspection and the taking of copies as the original document is subject.

(5) If such information or explanation is not furnished within the specified time, or if after perusal of such information or explanation the registrar is of opinion that the document in question discloses an unsatisfactory state of affairs, or that it does not disclose a full and fair statement of the matters to which it purports to relate, the registrar shall report in writing the circumstances of the case to the ²[Central Government].

¹(6) If it is represented to the registrar in materials placed before him by any contributory or creditor that the business of a company is carried on in fraud of its creditors or in fraud of persons dealing with the company or for a fraudulent purpose, he may after giving the company an opportunity of being heard by written order call on the company for information or explanation on matters specified in the order within such time as he may specify in the order and the provisions of sub-sections (2), (3) and (5) of this section shall apply to such order. If upon investigation the registrar is satisfied that any representation on which he has taken action under this sub-section is frivolous or vexatious, he shall disclose the identity of the informant to the company.

(7) The provisions of this section shall apply *mutatis mutandis* to documents which a liquidator is required to file under this Act.]

Inspection and Audit.

Investigation
of affairs of
company by
inspectors.

138. The ²[Central Government] may appoint one or more competent inspectors to investigate the affairs of any company and to report thereon in such manner as the ²[Central Government] may direct—

- (i) in the case of a banking company having a share capital, on the application of members holding not less than one-fifth of the shares issued ;
- (ii) in the case of any other company having a share capital, on the application of members holding not less than one-tenth of the shares issued ;

¹ Ins. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 77.

² Subs. by the A. O. for " L. G. "

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(iii) in the case of a company not having a share capital, on the application of not less than one-fifth in number of the persons on the company's register of members ;

(iv) in the case of any company, on a report by the registrar under section 137, sub-section (5).

139. An application by members of a company under section 138 shall be supported by such evidence as the ¹[Central Government] may require for the purpose of showing that the applicants have good reason for, and are not actuated by malicious motives in, requiring the investigation ; and the ¹[Central Government] may, before appointing an inspector, require the applicants to give security for payment of the costs of the inquiry.

Application for inspection to be supported by evidence

140. (1) It shall be the duty of all persons who are or have been officers of the company to produce to the inspectors all books and documents in their custody or power relating to the company.

Inspection of books and examination of officers.

(2) An inspector may examine on oath any such person in relation to its business, and may administer an oath accordingly.

(3) If any person refuses to produce any book or document which under this section it is his duty to produce, or to answer any question relating to the affairs of the company, he shall be liable to a fine not exceeding fifty rupees in respect of each offence.

141. (1) On the conclusion of the investigation, the inspectors shall report their opinion to the ¹[Central Government], and a copy of the report shall be forwarded by the ¹[Central Government] ²[to the registrar and another copy] to the registered office of the company, and a further copy shall, at the request of the applicants for the investigation, be delivered to them.

Results of examination how dealt with.

(2) The report shall be written or printed, as the ¹[Central Government] directs.

(3) All expenses of, and incidental to, the investigation shall be defrayed by the applicants unless the ¹[Central Government] directs the same to be paid by the company, which the ¹[Central Government] is hereby authorised to do.

²[Provided that the expenses of and incidental to an investigation held in pursuance of clause (iv) of section 138 shall be paid out of the assets of the company and shall be recoverable as an arrear of land-revenue.]

(4) The registrar shall keep the copy of the report sent to him with the records of the company in his custody.]

³[**141A.** (1) If from any report made under section 138 it appears to the ¹[Central Government] that any person has been guilty of any offence

Institution of prosecutions.

¹ Subs. by the A. O. for "I. G."

² Ins. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 78.

³ Ins. by s. 79, *ibid.*

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in relation to the company for which he is criminally liable, the ¹[Central Government] shall refer the matter to the Advocate General or the Public Prosecutor.

(2) If the officer to whom the matter is referred considers that the case is one in which a prosecution ought to be instituted, he shall cause proceedings to be instituted, and it shall be the duty of all officers and agents of the company, past and present (other than the accused in the proceedings), to give to him all assistance in connection with the prosecution which they are reasonably able to give.

(3) For the purposes of sub-section (2), the expression "agents" in relation to a company shall be deemed to include the bankers and legal advisers of the company and any persons employed by the company as auditors, whether those persons are or are not officers of the company.

(4) Any director, manager or other officer of the company convicted as the result of a prosecution initiated under this section shall not without the leave of the Court be a director of or in any way whether directly or indirectly be concerned in or take part in the management of a company for a period of five years from the date of such conviction.]

Power of
company to
appoint
inspectors.

142. (1) A company may by a special resolution appoint inspectors to investigate its affairs.

(2) Inspectors so appointed shall have the same powers and duties as inspectors appointed by the ¹[Central Government], except that, instead of reporting to the ¹[Central Government], they shall report in such manner and to such persons as the company in general meeting may direct.

(3) All persons who are or have been officers of the company shall incur the like penalties in case of refusal to produce any book or document required to be produced to inspectors so appointed, or to answer any question, as they would have incurred if the inspectors had been appointed by the ¹[Central Government].

Report of
inspectors to
be evidence.

143. A copy of the report of any inspectors appointed under this Act authenticated by the seal of the company whose affairs they have investigated, shall be admissible in any legal proceeding as evidence of the opinion of the inspectors in relation to any matter contained in the report.

Qualifications
and appoint-
ment of
auditors.

144. (1) No person shall be appointed or act as an auditor of any company other than a private company ²[not being the subsidiary company of a public company] unless he holds a certificate from the ³[Central Government] entitling him to act as an auditor of companies :

¹ Subs. by the A. O. for "L. G."

² Ins. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 80.

³ Subs. by the A. O. for the words "G. G. in C.", which had been subs. for the words "L. G." by the Indian Companies (Amendment) Act, 1930 (19 of 1930), s. 2.

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¹[Provided that a firm ²[whereof all the partners practising in India] hold such certificates may be appointed by its firm-name to be auditor of a company, and may act in its firm-name.]

³[(2) The ⁴[Central Government] may, by notification in the ⁵[Official Gazette] and after previous publication, make rules⁶ providing for the grant, renewal or cancellation of such certificates and prescribing conditions and restrictions for such grant, renewal or cancellation :

Provided that nothing contained in such rules shall preclude any person from being granted a certificate merely by reason that he does not practise as a public accountant.

(2A) In particular, and without prejudice to the generality of the foregoing power, such rules may—

- (a) provide for the maintenance of a Register of Accountants entitled to apply for such certificates ;
- (b) prescribe the qualifications for enrolment on the Register and the fees therefor ;
- (c) provide for the examination of candidates for enrolment, and prescribe the fees to be paid by examinees ;
- (d) prescribe the circumstances in which the name of any person may be removed from or restored to the Register ;
- (e) provide for the establishment, constitution and procedure of an Indian Accountancy Board, consisting of persons representing the interests principally affected or having special knowledge of accountancy in India, to advise ⁷[it] on all matters of administration relating to accountancy, and to assist ⁷[it] in maintaining the standards of qualification and conduct of persons enrolled on the Register ; and
- (f) provide for the establishment, constitution and procedure of local accountancy boards at such centres as the ⁴[Central Government] may select, to advise ⁷[it] and the Indian Accountancy Board on any matter that may be referred to them.

(2B) The holder of a certificate granted under this section shall be entitled to be appointed and act as an auditor of companies throughout British India.]

(3) Every company shall at each annual general meeting appoint an auditor or auditors to hold office until the next annual general meeting.

¹ Subs. by the Indian Companies (Amendment) Act, 1930 (19 of 1930), s. 2, for the original proviso.

² Subs. by the Indian Companies (Supplementary Amendment) Act, 1932 (1 of 1932), s. 2, for "whereof the partners all".

³ Sub-sections (2), (2A) and (2B) were subs. by Act 19 of 1930, s. 2, for the original sub-section (2).

⁴ Subs. by the A. O. for "G. G. in C."

⁵ Subs. by the A. O. for "Gazette of India."

⁶ See the Auditors' Certificates Rules, 1932, published with the Notification of the Govt. of India, Commerce Department (Registration of Accountants) No. 213-II-T. & E. (A-3), dated 26th March 1932.

⁷ Subs. by the A. O. for "him".

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(4) If an appointment of an auditor is not made at an annual general meeting, the ¹[Central Government] may, on the application of any member of the company, appoint an auditor of the company for the current year, and fix the remuneration to be paid to him by the company for his services.

(5) The following persons : that is to say,

- (i) a director or officer of the company ; and
- (ii) a partner of such director or officer ; and
- (iii) in the case of a company other than a private company, ²[not being the subsidiary company of a public company] any person in the employment of such director or officer ; ²[and
- (iv) any person indebted to the company ;]

shall not be appointed auditors of the company ²[and if any person after being appointed auditor becomes indebted to the company his appointment shall thereupon be terminated].

(6) A person, other than a retiring auditor, shall not be capable of being appointed auditor at an annual general meeting unless notice of an intention to nominate that person to the office of auditor has been given by a member of the company to the company not less than fourteen days before such annual general meeting, and the company shall send a copy of any such notice to the retiring auditor, and shall give notice thereof to its members either by advertisement or in any other mode allowed by the articles not less than seven days before the annual general meeting :

Provided that, if after notice of the intention to nominate an auditor has been given to the company, an annual general meeting is called for a date fourteen days or less after the notice has been given, the requirements of this section as to time in respect of such a notice shall be deemed to have been satisfied, and the notice to be sent or given by the company may, instead of being sent or given within the time required by this section, be sent or given at the same time as the notice of the annual general meeting.

(7) The first auditors of the company may be appointed by the directors before the statutory meeting, and if so appointed shall hold office until the first annual general meeting, unless previously removed by a resolution of the members of the company in general meeting, in which case such members at that meeting may appoint auditors.

(8) The directors may fill any casual vacancy in the office of auditor, but while any such vacancy continues, the surviving or continuing auditor or auditors (if any) may act.

(9) The remuneration of the auditors of a company shall be fixed by the company in general meeting, except that the remuneration of any auditors appointed before the statutory meeting, or to fill any casual vacancy, may be fixed by the directors.

¹ Subs. by the A. O. for "L. G."

² Ins. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 80.

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145. (1) Every auditor of a company shall have a right of access at all times to the books and accounts and vouchers of the company, and shall be entitled to require from the directors and officers of the company such information and explanation as may be necessary for the performance of the duties of the auditors. Powers and duties of auditors.

(2) The auditors shall make a report to the members of the company on the accounts examined by them, and on every balance-sheet ¹[and profit and loss account] laid before the company in general meeting during their tenure of office, and the report shall state :—

(a) whether or not they have obtained all the information and explanations they have required ; and

²[(b) whether or not in their opinion the balance-sheet and the profit and loss account referred to in the report are drawn up in conformity with the law ; and]

(c) whether ¹[or not] such balance-sheet exhibits a true and correct view of the state of the company's affairs according to the best of their information and the explanations given to them, and as shown by the books of the company ; ¹[and

(d) whether in their opinion books of account have been kept by the company as required by section 130.]

¹[(2A) Where any of the matters referred to in clauses (a), (b), (c) and (d) of sub-section (2) is answered in the negative or with a qualification, the report shall state the reason for such answer.]

(3) In the case of a banking company, if the company has branch banks beyond the limits of India, it shall be sufficient if the auditor is allowed access to such copies of and extracts from the books and accounts of any such branch as have been transmitted to the head office of the company in British India.

¹[(4) The auditors of a company shall be entitled to receive notice of and to attend any general meeting of the company at which any accounts which have been examined or reported on by them are to be laid before the company and may make any statement or explanation they desire with respect to the accounts.

(5) If any auditors' report is made which does not comply with the requirements of this section, every auditor who is knowingly and wilfully a party to the default shall be punishable with fine which may extend to one hundred rupees.]

146. (1) Holders of preference shares and debentures of a company shall have the same right to receive and inspect the balance-sheets ³[and profit and loss accounts] of the company and the reports of the auditors and other reports as is possessed by the holders of ordinary shares in the company. Rights of preference shareholders, etc., as to receipts and inspection of reports, etc.

¹ Ins. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 81.

² Subs. by s. 81, *ibid.*, for the original clause.

³ Ins. by s. 82, *ibid.*

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(2) This section shall not apply to a private company, nor to a company registered before the commencement of this Act :

¹[Provided that in the case of any public company whether registered before or after the commencement of this Act the trustees for holders of debentures shall have the right conferred by sub-section (1) on holders of preference shares and debentures of a company.]

Carrying on business with less than the legal minimum of members.

Liability for carrying on business with fewer than seven or, in the case of a private company, two members.

147. If at any time the number of members of a company is reduced, in the case of a private company, below two, or in the case of any other company, below seven, and it carries on business for more than six months while the number is so reduced, every person who is a member of the company during the time that it so carries on business after those six months and is cognisant of the fact that it is carrying on business with fewer than two members or seven members, as the case may be, shall be severally liable for the payment of the whole debts of the company contracted during that time, and may be sued for the same without joinder in the suit of any other member.

Service and Authentication of Documents.

Service of documents on company.

148. A document may be served on a company by leaving it at, or sending it by post to, the registered office of the company.

Service of documents on registrar.

149. A document may be served on the registrar by sending it to him by post, or delivering it to him, or by leaving it for him at his office.

Authentication of documents.

150. A document or proceeding requiring authentication by a company may be signed by a director, secretary or other authorised officer of the company, and need not be under its common seal.

Tables, Forms and Rules as to prescribed matters.

Application and alteration of tables and forms, and power to make rules as to prescribed matters.

151. (1) The forms in the Third Schedule or forms as near thereto as circumstances admit shall be used in all matters to which those forms refer.

(2) The ²[Central Government] may alter any of the tables and forms in the First Schedule, so that ³[it] does not increase the amount of fees payable to the registrar in the said Schedule mentioned, and may alter or add to the forms in the Third Schedule.

(3) Any such table or form, when altered, shall be published in the ⁴[Official Gazette], and on such publication shall have effect as if enacted in this Act,

¹ Ins. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 82.

² Subs. by the A. O. for "G. G. in C."

³ Subs. by the A. O. for "he".

⁴ Subs. by the A. O. for "Gazette of India".

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but no alteration made by the ¹[Central Government] in Table A in the First Schedule shall affect any company registered before the alteration, or repeal, as respects that company, any portion of that table.

(4) In addition to the powers hereinbefore conferred by this section, the ¹[Central Government] may make rules providing for all or any matters which by this Act are to be prescribed by ²[its] authority.

(5) Every such rule shall be published in the ³[Official Gazette], and on such publication shall have effect as if enacted in this Act.

Arbitration and Compromise.

IX of 1899.

152. (1) A company may by written agreement refer to arbitration, in accordance with the Indian Arbitration Act, 1899, an existing or future difference between itself and any other company or person.

Power for companies to refer matters to arbitration.

(2) Companies, parties to the arbitration, may delegate to the arbitrator power to settle any terms or to determine any matter capable of being lawfully settled or determined by the companies themselves, or by their directors or other managing body.

IX of 1899.

(3) The provisions of the Indian Arbitration Act, 1899, other than those restricting the application of the Act in respect of the subject-matter of the arbitration, shall apply to all arbitrations between companies and persons in pursuance of this Act.

153. (1) Where a compromise or arrangement is proposed between a company and its creditors or any class of them, or between the company and its members or any class of them, the Court may, on the application in a summary way of the company or of any creditor or member of the company or, in the case of a company being wound up, of the liquidator, order a meeting of the creditors or class of creditors, or of the members of the company or class of members, as the case may be, to be called, held and conducted in such manner as the Court directs.

Power to compromise with creditors and members.

(2) If a majority in number representing three-fourths in value of the creditors or class of creditors, or members or class of members, as the case may be, present either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the Court, be binding on all the creditors or the class of creditors, or on all the members or class of members, as the case may be, and also on the company, or, in the case of a company in the course of being wound up, on the liquidator and contributories of the company.

⁴[(3) An order made under sub-section (2) shall have no effect until a certified copy of the order has been filed with the registrar, and a copy of every such order shall be annexed to every copy of the memorandum of the

¹ Subs. by the A. O. for "G. G. in C."

² Subs. by the A. O. for "his".

³ Subs. by the A. O. for "Gazette of India".

⁴ Sub-sections (3) to (5) were ins. by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 83.

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company issued after the order has been made, or in the case of a company not having a memorandum, of every copy so issued of the instrument constituting or defining the constitution of the company.

(4) If a company makes default in complying with sub-section (3) the company and every officer of the company who is knowingly and wilfully in default shall be liable to a fine not exceeding ten rupees for each copy in respect of which default is made.

(5) The Court may, at any time after an application has been made to it under this section, stay the commencement or continuation of any suit or proceeding against a company on such terms as it thinks fit and proper until the application is finally disposed of.]

¹[(6)] In this section the expression "company" means any company liable to be wound up under this Act ²[and for the purposes of this section unsecured creditors who may have filed suits or obtained decrees shall be deemed to be of the same class as other unsecured creditors.]

²[(7) An appeal shall lie from any order made by the Court exercising original jurisdiction under this section to the authority authorised to hear appeals from the decisions of the Court.]

Provisions for
facilitating
arrangements
and compro-
mises.

³[153A. (1) Where an application is made to the Court under section 153 for the sanctioning of a compromise or arrangement proposed between a company and any such persons as are mentioned in that section, and it is shown to the Court that the compromise or arrangement has been proposed for the purposes of or in connection with a scheme for the reconstruction of any company or companies or the amalgamation of any two or more companies, and that under the scheme the whole or any part of the undertaking or the property of any company concerned in the scheme (in this section referred to as a 'transferor company') is to be transferred to another company (in this section referred to as 'the transferee company'), the Court may, either by the order sanctioning the compromise or arrangement or by any subsequent order, make provision for all or any of the following matters :—

- (a) the transfer to the transferee company of the whole or any part of the undertaking and of the property or liabilities of any transferor company ;
- (b) the allotting or appropriation by the transferee company of any shares, debentures, policies, or other like interests in that company which under the compromise or arrangement are to be allotted or appropriated by that company to or for any person ;
- (c) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company ;

¹ The original sub-section (3) was re-numbered as sub-section (6) by the Indian Companies (Amendment) Act, 1936 (22 of 1936), s. 83.

² Ins. by s. 83, *ibid.*

³ Ins. by s. 84, *ibid.*